



DISPLACEMENT  
SOLUTIONS

# *Bridging the HLP Gap*

The Need to Effectively Address Housing, Land and Property Rights  
During Peace Negotiations and in the Context of Refugee/IDP Return:

*Preliminary Recommendations to the Government of Myanmar,  
Ethnic Actors and the International Community*







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*All photos in this publication depict various scenes from refugee camps along the Myanmar/Thai border.*

# Myanmar



*Access to land and security of tenure are critical to facilitating the return of displaced populations. Return should be undertaken based on the full range of durable solutions: Return to place of origin, local integration and relocation to a third location as and where appropriate. Support for return should also ensure that the needs of the ‘receiving’ community are also met.<sup>1</sup>*

## Executive Summary

Of the many challenging issues that will require resolution within the peace processes currently underway between the government of Myanmar and various ethnic groups in the country, few will be as complex, sensitive and yet vital than the issues comprising housing, land and property (HLP) rights. Viewed in terms of the rights of the sizable internally displaced person (IDP) and refugee populations who will be affected by the eventual peace agreements, and within the broader political reform process, HLP rights will need to form a key part of all of the ongoing moves to secure a sustainable peace, and be a key ingredient within all activities dedicated to ending displacement in Myanmar today.

The Government Myanmar (including the military) and its various ethnic negotiating partners – just as with all countries that have undergone deep political transition in recent decades, including those emerging from lengthy conflicts – need to fully appreciate and comprehend the nature and scale of the HLP issues that have emerged in past decades, how these have affected and continue to affect the rights and perspectives of justice of those concerned, and the measures that will be required to remedy HLP concerns in a fair and equitable manner that strengthens the foundations for permanent peace. Resolving forced displacement and the arbitrary acquisition and occupation of land, addressing the HLP and other human rights of returning refugees and IDPs in areas of return, ensuring livelihood and other economic opportunities and a range of other measures will be required if return is to be sustainable and imbued with a sense of justice.

There is an acute awareness among all of those involved in the ongoing peace processes of the centrality of HLP issues within the context of sustainable peace, however, all too little progress has thus far been made to address these issues in any detail, nor have practical plans commenced to resolve ongoing displacement of either refugees or IDPs. Indeed, the negotiating positions of both sides on key HLP issues differ sharply and will need to be bridged; many difficult decisions remain to be made.

At this stage of the various negotiations, offering final recommendations to the many negotiating parties on the intricacies of what will be required to secure HLP rights may be somewhat premature. As such, this report concludes with a series of *preliminary* recommendations that are designed to bridge any HLP gaps that may be in

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<sup>1</sup> UN Interagency Framework Team for Preventive Action, Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict (2010), 11.

place between the parties and to facilitate ways and means of addressing these issues within peace agreements that best serve the interests of all involved. In particular:

#### **THE GOVERNMENT OF MYANMAR SHOULD:**

1. **Ensure** that all peace and voluntary repatriation and return agreements that it concludes with ethnic groups fully comply with international law, the UN Principles on Housing and Property Rights for Refugees and Displaced Persons (*Pinheiro Principles*) and international best practice with respect to the HLP rights of refugees and IDPs;
2. **Guarantee**, at a minimum, that each of the five core HLP rights are fully enshrined within all peace and voluntary repatriation and return agreements it concludes, in particular, (a) the right to voluntary return; (b) the right to HLP restitution; (c) the right to adequate housing and secure tenure; (d) the right to protection against forced eviction; and (e) the right not to be arbitrarily deprived of one's property;
3. **Reconsider** the view that the original lands of refugees and IDPs acquired following their displacement was legal under prevailing laws at the time of acquisition and, therefore, not available for restitution to the original owners and occupants;
4. **Protect** and respect the rights of returning refugees and IDPs to return to their original lands, if this is at all possible and viewed as the preferred remedy by returnees, as well as other durable solutions to displacement;
5. **Guarantee** that just and satisfactory compensation is provided to returning refugees and IDPs if restitution is deemed to be materially impossible;
6. **Display flexibility** on potentially contentious HLP issues, and do so with an understanding that compromises and concessions on certain HLP issues will yield political and other dividends from all actors, both domestic and international; and
7. **Agree** to the establishment of independent and effective mechanisms to resolve any HLP disputes that may arise in the context of return.

#### **ETHNIC ACTORS SHOULD:**

1. **Develop** consistent and unified negotiating positions on HLP rights issues and ensure that these positions represent both the wishes of refugees and IDPs and conform to international law including the *Pinheiro Principles* and international best practice;
2. **Carry out** intensive surveys, assessments and related research to accurately determine refugee and IDP views on critical HLP issues, as well as statistical data relating to all HLP issues; and
3. **Ensure**, to the maximum possible extent, that all ethnic groups have a common and clear position on all of the major HLP rights likely to be addressed within the context of peace negotiations and refugee and IDP return, in particular the five core rights outlined in section II of this report.

#### **THE INTERNATIONAL COMMUNITY SHOULD:**

1. **Advocate** for the inclusion of HLP rights issues within all peace and voluntary repatriation agreements affecting both refugees and IDPs in which they are involved or are otherwise able to influence;
2. **Consolidate** the views of international agencies and donors on refugee/IDP restitution and return and related HLP themes;
3. **Encourage** the application of the *Pinheiro Principles* to refugee and IDP restitution and return;
4. **Support** training and capacity-building programmes for peace negotiators from the Government and ethnic groups on HLP issues; and
5. **Distribute** copies of the multi-agency (FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR), *Handbook on Housing and Property Restitution for Refugees and Displaced Persons - Implementing the Pinheiro Principles*, (March 2007), to all relevant peace negotiators.

# I. Introduction – Bridging the HLP Gap<sup>2</sup>

1. Despite the ongoing political reforms in Myanmar, a large number of refugees and internally displaced persons belonging to various ethnic groups are still unable or unwilling to return to their places of habitual residence or to exercise other durable solutions to their displacement.<sup>3</sup> Although some have posited that return may commence as early as 2013,<sup>4</sup> and UNHCR has indicated that return planning should commence now, as of June 2013 there are no final agreements nor plans in place to secure the exercise of the right to return by the hundreds of thousands of refugees and IDPs from Myanmar, and the issue of return remains the subject of some controversy.<sup>5</sup> While many long-standing armed ethnic conflicts have resulted in ceasefire agreements in recent years, other decades-old conflicts remain ongoing, and in none of these conflicts has a comprehensive and final peace agreement outlining refugee and IDP returns issues been agreed, although a variety of peace initiatives are well underway, led by the government's Chief Negotiator, U Aung Min, with the assistance of the recently established Myanmar Peace Centre, and other independent initiatives such as the Myanmar Peace Support Initiative.<sup>6</sup> While a series of talks seeking to achieve such agreements have commenced, it remains to be seen when and if these agreements will be concluded, nor are the likely contents of such agreements thus far known. The recent surges of violence in both Rakhine and Kachin States are signs of just how challenging finding mutually satisfactory agreements will be.

2. While it may still be some time before the considerable internal and externally displaced population of Myanmar (in addition to the far-larger immigrant population in Thailand, which is estimated to be more than ten times larger) begins any large-scale return and repatriation process, it will be vital that any such return, once it commences, is undertaken in a **voluntary** and **rights-based** manner, in the best interests of those involved, and that those choosing to return can expect that their HLP rights will be met, in particular their restitution and compensation rights to have restored to them all housing, land or property that they held rights at the time of their displacement.

3. This paper provides a brief overview of the main HLP rights issues that are likely to arise within the various peace and voluntary repatriation processes and how they may most effectively be addressed by all sides during the negotiation process. It focuses on return, repatriation and restitution as fundamental aspects in any attempt to secure durable solutions to refugees and IDPs, and does not explore in any detail the other main durable solutions, those of local integration and resettlement, which at any rate, are becoming increasingly less prominent as viable options. In preparing this report, DS undertook intensive research as well as numerous interviews with officials from many of the actors involved in the various peace processes, both within the country as well in neighbouring border areas in Thailand. Based on these discussions, it is clear that HLP issues are truly 'make or break' themes that require careful attention by all concerned.

4. The paper examines the views of refugees and IDPs and their representatives on the question of eventual return, explores current government views on this issue, examines the state of domestic law on HLP questions and compares these with international principles in this regard. The report concludes with a series of recommendations to improve the HLP prospects of refugees and IDPs in the country and those considering return from third countries.

5. Though precise figures are difficult to calculate, the Internal Displacement Monitoring Centre estimates that there are some 458,000 IDPs within Myanmar, while UNHCR figures point to 215,000 refugees from Myanmar living within camps along the Thai border.<sup>7</sup> Both IDPs and refugees belong to a range of ethnic groups that

<sup>2</sup> The Director of Displacement Solutions, Scott Leckie, prepared this report. He has worked on refugee and IDP return and restitution issues in 18 countries, all of which were undergoing various forms of structural political reform. He has written a number of books and academic articles on these issues, and was the instigator of numerous international standards on HLP rights. Displacement Solutions would like to thank and acknowledge the efforts provided by Geoff Myint in assisting to bring this report to fruition. Displacement Solutions would also like to thank the Federal Department for Foreign Affairs (FDFA) of the Government of Switzerland for their kind and generous support in making this report possible.

<sup>3</sup> This report focuses on conflict-induced displacement resulting from the various ethnic conflicts that have been underway for decades, and how this form of displacement can best be addressed within the context of ongoing peace processes. The report does not address broader displacement issues, including disaster-induced or climate-induced displacement, nor more recent forms of development-induced displacement or displacement caused by land grabbing and land speculation, some of which are addressed in another report by Displacement Solutions published in October 2012, entitled: *Myanmar at the HLP Crossroads: Proposals for Building an Improved Housing, Land and Property Rights Framework that Protects the People and Supports Sustainable Economic Development*.

<sup>4</sup> 'Refugees May Go Home in 2013' in *The Myanmar Times* (17 September 2012).

<sup>5</sup> See, for instance, Charlie Campbell, 'The Tricky Question of Resettling the Displaced' in *Irrawaddy* (29 Sept 2012), <http://www.irrawaddy.org/archives/15231>.

<sup>6</sup> See, for instance, Ashley South, 'From ceasefires to lasting peace?' in *Myanmar Times*, Volume 33, No. 642 September 3 - 9, 2012. See also, the efforts of the Myanmar Peace Support Initiative, among others.

<sup>7</sup> See: [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/59F29664D5E69CEF802570A7004BC9A0?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/59F29664D5E69CEF802570A7004BC9A0?OpenDocument).

have been engaged in various armed conflicts, ceasefire agreements and unresolved political disputes with the governments – mostly military-led – that have ruled Myanmar since independence in 1948.<sup>8</sup> All relevant actors agree that resolving the displacement of these groups will constitute a key element in any lasting and durable peace that may be concluded between the Government of Myanmar and the groups representing the various ethnic groups from which the displaced population hail.

6. Although concrete positions on HLP issues by either the Government or the ethnic groups have yet to be officially presented in public, there is a clear desire by the various displaced communities to end their precarious existence as displaced persons and to return to either their country (in the case of refugees) or to their areas of habitual inhabitation (as in the case of IDPs). Be this as it may, however, there remains a considerable degree of confusion and a prevailing lack of clarity as to virtually all dimensions of any eventual return process. For instance, it appears that neither the Government peace negotiating teams nor the various ethnic groups and their respective negotiating teams have a consolidated and comprehensive position on the multifarious issues involved in the question of securing durable solutions for the entire displaced population. A series of fundamental questions remain to be addressed and agreed upon in this regard, including whether returnees wish to or will be allowed to return to where they lived prior to their displacement, whether those unable to return to their places of habitual residence will be provided compensation, the extent to which Government and the international community will provide economic and livelihood opportunities for returnees, whether specific institutions will be established to address restitution claims from returning refugees and IDPs and many others. How most fairly and equitably to address the issue of land confiscated by former governments, military entities and 'crony' companies has also yet to be adequately addressed, and may well prove one of the more complex issues to be resolved in this regard.

7. Finding mutually acceptable answers to these and numerous other HLP challenges - that are fully in compliance with international law - will be an important aspect of the ongoing peace processes between the Government and ethnic groups.<sup>9</sup> Failing to address these concerns will leave everyone worse off. All sides to the various conflicts will be best served by a robust, open and clear discussion of HLP issues and the development of proposals and agreements that address these issues in all of their complex manifestations. Peace negotiators throughout the international community have increasingly come to understand that HLP rights are critical elements in post-conflict peacebuilding.<sup>10</sup> Bridging the HLP rights gap in Myanmar will, thus, be a major challenge in the months ahead, and much can be learned from the experiences of other countries that have made the transition from conflict to peace.

<sup>8</sup> Transnational Institute & Burma Centrum Nederland, *Conference Report: Prospects for Ethnic Peace and Political Participation in Burma/Myanmar* (Bangkok, July 8-9, 2012).

<sup>9</sup> See, for instance: USAID – Office of Conflict Management and Mitigation (2004). *Land and Conflict – A Toolkit for Intervention*, Washington DC, USAID. "People have fought over land since the beginning of recorded history. Population growth and environmental stresses have exacerbated the perception of land as a dwindling resource, tightening the connection between land and violent conflict. Land is often a significant factor in widespread violence and is also a critical element in peace-building and economic reconstruction in post-conflict situations", p. 2.

<sup>10</sup> It is interesting to note that while official UN responses to HLP concerns in post-conflict settings is relatively new, the 1991 civil society initiative resulting in the *York Charter for Reconstruction After War* was ahead of its time in advocating for the HLP rights of those affected by conflict. The Charter outlines nine entitlements of the civilian non-combatants suffering from war damage to their physical environment: 1. The restitution of his/her property or the equivalent; 2. The right to recover his/her personal possessions from an abandoned home; 3. The right to an appropriate temporary shelter; 4. The right to be consulted over the form of reconstruction; 5. The right to draw on skilled help in reconstruction where needed; 6. The repair and reconstruction of his/her dwelling in an ethnically sympathetic manner to standards no less than previously and with appropriate hygienic facilities; 7. The re-establishment of the local community in a manner no less adequate than before; 8. The provision of a means of livelihood and workplace; and 9. The provision of essential community facilities in terms of medical support, water and fuel supplies, drainage and waste disposal.



## II. The Five Core HLP Rights in Situations of Refugee/IDP Return

8. The international housing, land and property rights normative framework relevant to refugee and IDP return and voluntary repatriation is far more advanced and comprehensive than is often known.<sup>11</sup> HLP norms are found widely throughout international, regional, national and local law, within the legal regimes of human rights law, humanitarian law, refugee law, criminal law, constitutional law and civil law. This extensive normative framework can assist peace negotiators in developing consistent and clear approaches to HLP themes that emerge in the process of their work and can provide a value neutral means of securing agreement on often-tough negotiating points touching on HLP themes. The importance of incorporating HLP concerns into the peacemaking and peacebuilding processes is amplified by the growing prominence accorded a range of HLP rights and obligations under these various legal regimes, each of which can assist peace negotiators in finding solutions to often vexing HLP stumbling blocks. Some of the specific rights that are clearly enshrined within these regimes include the right to voluntary return, the right to HLP restitution, the right to adequate housing, the right to be protected against forced eviction, the right not to be arbitrarily deprived of one's property, the right to privacy and respect for the home, the right to freedom of movement and others.<sup>12</sup> *The Rome Statute of the International Criminal Court* specifically addresses a series of acts and omissions relating directly to HLP rights which could constitute international crimes.<sup>13</sup> Five of these rights can be seen as the core HLP rights that need to be considered in developing policies and agreements on refugee and IDP return.

9. *The Right to Voluntary Return* - The right of refugees and IDPs displaced due to conflict is one of the primary HLP rights issues that will arise within virtually all peace talks. Widely reaffirmed in numerous human rights standards, the right to voluntary return is formulated in the following manner within Principle 10 of the 2005 *Pinheiro Principles*:

10(1) All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin;

10(2) States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations;

10(3) Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property; and

<sup>11</sup> See, for instance: FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons - Implementing the Pinheiro Principles*, March 2007; International Center for Transitional Justice, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, New York, May 2007; Leckie, S., *Housing, Land and Property Restitution Rights for Refugees and Displaced Persons: Laws, Cases and Materials*, (editor), Cambridge University Press, 2007; and Leckie, S., *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional Policy Framework*, UNHCR, 2005.

<sup>12</sup> In terms of obligations, in addition to the legal responsibilities of States to respect and protect the relevant HLP rights just noted, grave breaches of texts such as the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) are particularly clear in prohibiting activities involving arbitrary displacement and the destruction of property, for instance: Art. 33 No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited; Art. 49 ...Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased....The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies; Art. 53 Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered necessary by military operations; Art. 147 Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ...extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. In addition, Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977) further strengthens these principles: Art. 17 (1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Art. 17(2) Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

<sup>13</sup> See: Displacement Solutions, *Housing, Land and Property Rights and International Criminal Justice: Holding HLP Rights Violators Accountable*, September 2012.

10(4) States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.<sup>14</sup>

These provisions reflect the transformation of the right to voluntary return (or repatriation) into a concept involving not simply the return to one's country or region of origin, but to one's *original home, land or property*. Increasingly, therefore, return rights and HLP restitution rights need to be treated in tandem with one another. At the same time, the right to voluntary return – whether for refugees or displaced persons – is indeed *not* an obligation to return. Return cannot be restricted, and conversely it cannot be imposed. It must be a free choice by those concerned, and procedures and mechanisms need to be developed to ensure that this right can be secured for all who wish to assert it.

10. *The Right to HLP Restitution*: Over the past decade, inter-governmental agencies, government officials, United Nations and NGO field staff and others working in protection or support capacities with refugees and internally displaced persons (IDPs) have become increasingly involved in efforts to secure durable, rights-based solutions to all forms of displacement based on the restoration of possession of one's original home is the *preferred remedy* to displacement. A range of institutions have also directly addressed housing and property restitution as rights. For instance, the UN Committee on the Elimination of Racial Discrimination (CERD) in *General Recommendation No. 22 (1997) (Article 5 on refugees and displaced persons)*, recognises that refugees and displaced persons have the "right freely to return to their homes of origin under conditions of safety; States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-defilement and non-expulsion of refugees; All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void; (d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance."<sup>15</sup> The *Pinheiro Principles*, expand and clarify further the rights of all refugees and displaced persons 'to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived'.<sup>16</sup>

11. The right to HLP restitution should not be made conditional on the physical return of someone who has been displaced from their home or place of habitual residence, and that these rights remain valid notwithstanding whether return actually takes place. In some settings, return may be impossible, irresponsible or illegal due to the security situation or potential threats, but a person with a restitution right may wish to exercise rights over that property without physically returning there. Particularly crucial in these contexts, of course, are the expressed wishes of those holding restitution rights; beneficiaries of these rights can neither be forced to return, nor forced to accept a resolution of their restitution claims unless this is fully consistent with the terms of international law. In South Africa's restitution experience, for example, the concept of *equitable redress* was one important form of restitution which allowed many beneficiaries to access restitution rights without necessarily reinhabiting their former homes and lands.

<sup>14</sup> See: Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1). This document contains the official UN text of the Principles on Housing and Property Restitution for Refugees and Displaced Persons, as approved by UN Sub-Commission on the Protection and Promotion of Human Rights in Resolution 2005/21 of 11 August 2005.

<sup>15</sup> CERD expressed similar sentiments in General Recommendation No. 23 (1997) (on indigenous peoples), which outlines the rights of indigenous peoples to have any lands and territories which they were deprived from, restored to them. The Recommendation states, inter alia, "5. The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories." (UN Doc. A/52/18, annex V (1998), adopted 18 August 1997).

<sup>16</sup> See: Principle 2. The right to housing and property restitution: 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal; 2.2 States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution...

12. *The Right to Adequate Housing and Security of Tenure*: The right to adequate housing is found throughout international human rights law,<sup>17</sup> most notably in Article 25(1) of the Universal Declaration on Human Rights in 1948, and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (CESCR). Those entitled to the right to adequate housing are legally assured to housing that is *adequate*. Under *General Comment No. 4* issued by the UN Committee on Economic, Social and Cultural Rights in 1991, adequacy has been specifically defined to include: security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy, and this would apply to returning refugees and IDPs as much as it would to any other persons.<sup>18</sup> Governmental obligations derived from this right include duties to take measures to confer security of tenure (and consequent protection against arbitrary or forced eviction and/or arbitrary confiscation or expropriation of housing); to prevent discrimination in the housing sphere; to ensure equality of treatment and access vis-à-vis housing; to protect against racial discrimination; to guarantee housing affordability; and many others. Returnees, as well as all other rights-holders, need to be assured that these rights will be protected and secured upon return.

13. *The Right to be Protected Against Forced Evictions*: Building on the legal foundations of the rights to adequate housing and secure tenure, international standards increasingly assert that forced evictions constitute 'a gross violation of human rights, in particular the right to adequate housing'.<sup>19</sup> The 1998 UN *Guiding Principles on Internal Displacement* adopt a similar perspective and state clearly in Principle 6 that 'Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence'. *General Comment No. 7 on Forced Evictions* (1997),<sup>20</sup> also issued by the UN Committee on Economic, Social and Cultural Rights, is perhaps the most detailed statement interpreting the view of international law on this practice, re-affirming the sentiments of the 1991 General Comment No. 4 that: '[t]he Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (para. 18)'. General Comment No. 7 goes one step further in demanding that 'the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions'. The Comment requires countries to 'ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards by private persons or bodies'.

14. *The Right Not to be Arbitrarily Deprived of One's Property*: Closely related to the security of tenure question, and rights to privacy and respect for the home, the right not to be arbitrarily deprived of one's property is widely addressed throughout human rights law. It is important to point out that the property rights provisions found in the Universal Declaration on Human Rights in Article 17 (which guarantees everyone the right to own property alone as well as in association with others, and prohibits the arbitrary deprivation of property) were not included in either of the subsequent (legally binding) International Covenants on Human Rights, approved in 1966 and which became law on those States which have ratified them as from 1976. For it is in determining the scope of both the rights of individuals and those of the State that we can determine which measures resulting in eviction are truly justifiable and which are not. While expropriation (also known as compulsory purchase/acquisition) is not in and of itself a prohibited act, under human rights law it is subject to increasingly strict criteria against which all such measures must be judged to determine whether or not they are lawful. The power of States to expropriate carries with it five fundamental pre-conditions, namely when housing, land or property rights are limited, this can only be

<sup>17</sup> Beyond the Universal Declaration and the Covenant, rights to housing are found in the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e)(iii)), the Convention on the Rights of the Child (art. 27(3)); the Convention on the Elimination of All Forms of Discrimination Against Women (art. 14(2)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43(1)(d)), ILO Recommendation No. 115 on Workers' Housing and many other standards.

<sup>18</sup> *General Comment No. 4 on the Right to Adequate Housing* (1991), Para. 8.

<sup>19</sup> A 2004 UN Commission on Human Rights resolution on the 'Prohibition of forced evictions', for instance, rather unequivocally reaffirms 'that the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing', and which also urged Governments 'to undertake immediately measures, at all levels, aimed at eliminating the practice of forced eviction by, *inter alia*, repealing existing plans involving forced evictions as well as any legislation allowing for forced evictions, and by adopting and implementing legislation ensuring the right to security of tenure for all residents, [and to] 'protect all persons who are currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups'. Commission on Human Rights Resolution 2004/28 (10 April 2004).

<sup>20</sup> *General Comment No. 7* (1997) - The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions (UN doc. E/C.12/1997/4), adopted 16 May 1997 by the UN Committee on Economic, Social and Cultural Rights at its' 16th session, held in Geneva).

carried out when the expropriation concerned is: subject to law and due process; subject to the general principles of international law; in the interest of society and not for the benefit of another private party; proportionate, reasonable and subject to a fair balance test between the cost and the aim sought; and subject to the provision of just and satisfactory compensation.



### III. Return, Restitution and Peace

15. No conflict, notwithstanding its nature, or how small or short in duration it may be, is without some degree of crisis within the housing, land and property spheres, and Myanmar is no exception.<sup>21</sup>

16. Indeed, HLP rights issues are present in all conflicts and post-conflict settings, and their management by those engaged in peace efforts can often be decisive in determining the extent to which peace is sustained, and the degree to which measures of remedial and restorative justice are enshrined within post-conflict political and legal frameworks.<sup>22</sup> In all conflicts, land becomes a spoil of war and is often acquired ('grabbed') unlawfully and/or illegitimately by members of dominant military groupings, homes are destroyed or damaged, available housing is often occupied by persons with no legal rights to do so, ownership and tenancy disputes between competing parties often emerge and turn violent and generally, the housing, land and property sectors become a source of tension and instability. With habitable housing and land as two of very few assets available to people in post-conflict settings, problems of illegal occupations, squatting and exploitative rent increases are also common.

17. A brief sampling of some of the more prominent HLP challenges that arise in countries enduring or emerging from conflict reveals the extent to which these concerns are indelibly linked to conflict and post-conflict recovery, and include: *The return of refugees and internally displaced persons* – As noted, returning refugees and IDPs are increasingly recognised as possessing housing, land and property restitution rights to recover and repossess their original homes,<sup>23</sup> but these rights are routinely infringed, resulting in refugees and IDPs being unable to repossess and re-inhabit their habitual homes and lands in the aftermath of conflict;<sup>24</sup> *Secondary occupation of housing, land and property* – The exertion of control over and possession of housing, land and property by military entities, companies and other persons without official rights to do so is common to all post-conflict situations, and can cause considerable tension in the aftermath of conflict; *Residential HLP destruction and damage* – All conflict results in property and asset losses, and the large-scale damage and destruction of housing and land resources; *HLP disputes* – As refugees and IDPs seek to reclaim their original homes, as lower-income groups seek to find places to live and as well-connected or otherwise powerful opportunists attempt to take advantage of the breakdown in law and order, serious HLP disputes can emerge, many of which can result in violence and greater insecurity; *The absence of impartial housing dispute resolution mechanisms* – Post-conflict territories generally face a non-existent, mal-functioning or seriously over-burdened judicial or dispute resolution systems, leaving victims of HLP abuse without recourse to HLP remedies; *Pre-conflict ownership and tenancy disputes* – Longstanding, pre-conflict HLP ownership and tenancy disputes can re-emerge in the post-conflict period and require resolution. In some instances, no clear title may have ever existed to the land or dwelling in question, while in others several people may place competing claims on the same piece of land or house; *Discriminatory HLP laws* – Pre-conflict legal frameworks may discriminate against certain ethnic groups, women and others and will require reform to ensure equal access to HLP resources and rights; *Abandonment laws* – arbitrarily applied or otherwise unfair housing abandonment laws may lead to the arbitrary and illegal loss of rights over homes and lands and will often require formal reversal through the enforcement of restitution decisions; *The destruction of ownership and tenancy rights records* – The confiscation or outright destruction of housing, land and property titles, local housing and property cadastres, property registries and other official records giving proof of ownership, occupancy, tenancy and other residential rights accompanies most conflicts, and complicates the implementation of restitution and other remedial measures; *Mid-conflict housing privatization* – What were previously public/social housing resources are sometimes privatised during conflicts while occupied by secondary unauthorised

<sup>21</sup> See, for instance: Scott Leckie and Chris Huggins (ed) *Conflict and Housing, Land and Property Rights – A Handbook on Issues, Frameworks and Solutions*, (Cambridge University Press, 2011) and Scott Leckie (ed) *Housing, Land and Property Rights and UN Peace Operations – A Comparative Survey and Proposals for Reform* (Cambridge University Press, 2008).

<sup>22</sup> The different stages of conflict – pre-conflict, mid-conflict and post-conflict – are each generally associated with different HLP issues. In terms of pre-conflict HLP issues, the traditional two main generators of conflict – greed and grievance – both play themselves out in often-dramatic fashion within the HLP sectors. Various types of HLP disputes can be a primary source of internal conflict particularly when simmering HLP grievances remain unresolved, with those perceived as victims unable to access any form of remedial justice or redress. HLP crises, many of which are key causes of the localised instability and violence that can eventually mutate into full-scale conflict - land grabbing and illegal expropriation, forced evictions, mass resettlement and relocation schemes, discrimination against ethnic groups and minorities within the HLP sectors, the growing inability of these groups to access HLP rights, the lack of access to affordable services such as water and electricity, the growth of slums and declining housing conditions, the growing unaffordability of housing and land and the lack of security of tenure - can all contribute to the creation of conditions that are ripe for conflict.

<sup>23</sup> See, for instance, the 2005 the UN 'Pinheiro' *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, which expand and clarify further the restitution rights of all refugees and displaced persons.

<sup>24</sup> See Scott Leckie (ed) (2003) *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Transnational Publishers, New York.

occupants, often complicating restitution and other post-conflict HLP initiatives; *Homelessness and landlessness* – The combination of conflict, displacement, destroyed housing, the absence of the rule of law, a dysfunctional economy and other factors often lead to considerable levels of homelessness and landlessness within post-conflict environments; *Insecure housing and land tenure* – In many conflict settings, within the private rental sector the legal position of tenants can be tenuous, and leave them open to harassment and threats of arbitrary eviction. In other instances, lower-income neighborhoods, in particular informal settlements, may not possess recognised legal security of tenure rights despite having adverse possession rights based on long-term habitation; *The lack of appropriate land administration frameworks and policies* – Many countries emerging from conflict do not have effective land administration frameworks and policies in place that provide security to land users and clear regulatory arrangements that are both fair and equitable; *Land grabbing* – The arbitrary acquisition of housing, land and property through land grabbing is commonplace in post-conflict environments, and requires the attention of peace negotiators; and *Parallel HLP systems within a single legal jurisdiction* – In many conflict countries customary land arrangements govern some of the territory concerned, while statutory laws are also in place. Balancing customary and statutory HLP laws, within a rights-based context, is increasingly seen as another vital ingredient in building long-term peace.

18. To one degree or another, all of these phenomena exist in contemporary Myanmar. As even this rudimentary elaboration of some of the key HLP issues arising in post-conflict environments clearly reveals, housing, land and property challenges will increasingly arise during peace negotiations in the country, and peace negotiators from all sides need to grasp the central nature of these issues in the search for peace.

19. As noted in section II, HLP issues, as *rights*, are widely recognised throughout international human rights and humanitarian law, and provide a clear and consistent legal normative framework for developing better approaches to the HLP challenges that will invariably face peace negotiators seeking to build long-term peace. The Universal Declaration on Human Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and many others all recognise formulations of HLP rights.<sup>25</sup> Taking fully into account the manner by which international human rights law treats housing, land and property rights and incorporating these into peace processes will be a fundamental challenge facing peacemakers in post-conflict Myanmar.

20. Most commentators now agree that without appropriately addressing HLP issues, States emerging from conflict may not be able to adequately facilitate refugee and IDP return and restitution processes in a manner reflecting the rights of those concerned, economic recovery will be stifled, and the protection of human rights will remain incomplete. UNHCR believes, for instance, that repatriation operations are likely to be *less successful* if HLP issues are ignored or are left to be considered only after significant numbers of persons return.<sup>26</sup> These understandings are apparent throughout the international community and within a range of international peacemaking bodies. Within the office of the UN Secretary General, for instance, reports on the rule of law and transitional justice in conflict and post-conflict societies<sup>27</sup> and the protection of civilians in armed conflict,<sup>28</sup> both of which were considered by the Security Council, each recognise the centrality of HLP concerns in the development of the rule of law within such societies and the need for improved international coordinated attention to these issues.<sup>29</sup>

<sup>25</sup> See, for instance, <http://displacementsolutions.org/hlp-resources> for a full overview of relevant HLP rights sources in international law.

<sup>26</sup> In this regard UNHCR has noted that 'Recovery of refugees' homes and property in their countries of origin needs to be addressed consistently to ensure that effective solutions to refugee displacement are found...Human rights law in relation to the right to adequate housing has evolved significantly over the past decade. The *right of a refugee to return to her/his country* is now increasingly coupled with her/his *right to adequate housing*. In this context, the right to adequate housing has developed to extend to the right not to be arbitrarily deprived of housing and property in the first place. As corollary to this, refugees have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted (restitution). If this is not possible, then the right to adequate compensation for any loss suffered comes into play.' (See: UNHCR Inter-Office Memorandum No. 104/2001 and UNHCR Field Office Memorandum No. 101/2001).

<sup>27</sup> UN Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies*, UN Security Council, S/2004/616, 3 August 2004.

<sup>28</sup> UN Secretary General, *Report on the protection of civilians in armed conflict*, UN Security Council, S/2007/643, 28 October 2007. The report suggests that a more consistent, systematic and comprehensive approach to HLP issues be developed, that includes: (a) Preventive and deterrent actions, such as the strategic deployment of peacekeeping troops to prevent evictions and the illegal appropriation of land and property, and the identification and prosecution by national courts or the International Criminal Court of those criminally responsible for the illegal appropriation or destruction of land and property; (b) Preparatory actions, such as the early identification and registration of land and property abandoned by internally displaced persons and refugees to facilitate restitution or, where necessary, compensation, and the issuance of ownership documentation where this has been lost or destroyed; and (c) Restorative actions, such as the inclusion of the right to return and restitution of housing, land or property in all future peace agreements and all relevant Council resolutions, and the inclusion of housing, land and property issues as an integral part of future peacekeeping and other relevant missions, with provisions for dedicated, expert capacity to address these issues.

<sup>29</sup> Id, para. 59. The report also recommends the following concrete steps towards generating renewed attention to HLP rights by the Security Council: Action four - Housing, land and property rights: (i) Systematically including language in all relevant resolutions on the right of displaced persons and refugees to return to their homes and places of origin and on non-acceptance of the results of ethnic cleansing or sectarian violence; (j) Promoting the establishment of effective and appropriate mechanisms at the national level for addressing housing, land and property issues; (k) Mandating United Nations peacekeeping and other relevant missions to prevent the illegal appropriation or confiscation of land and property, to identify and register land and property abandoned by refugees and displaced persons and to issue ownership documentation where

21. And yet, although HLP issues are now increasingly understood at all levels to constitute some of the fundamental causes, effects and remedies for conflict, those facilitating the quest for peace - peace negotiators - often find the prospect of addressing the full spectrum of HLP concerns as potentially threatening to the successful conclusion of sensitive, often lengthy and tense negotiating sessions seeking viable recipes for peace. For many negotiators, the inclusion of HLP rights into what are already perceived to be their overflowing array of responsibilities, may seem overly daunting and possibly obstructive of eventual agreement. There may be feelings that addressing HLP issues may attract unwelcome international attention to private negotiation processes. Because entities responsible for HLP rights violations themselves are often the very actors negotiating peace agreements, there can be additional walls of resistance by parties to peace talks that may need to be slowly broken down before these issues can be addressed. Local political players often have considerable vested interests in housing, land or property unlawfully acquired during the conflict in question, and as a result peacemakers may find themselves in an uphill battle to achieve recognition of HLP issues during these undertakings and may consequently choose paths of lesser resistance. These processes are already well underway in Myanmar.

22. Whatever balance of power that may exist at the time of peace negotiations can also determine how and to what extent HLP rights demands are formulated by the parties concerned. Questions of timing and sequencing within the negotiation process in terms of HLP rights, and what are perceived to be issues that are too long-term in nature to warrant the immediate attention of peace negotiators more familiar with questions of ceasefires, land mine clearance and outlining future forms of governance, can also be contributing factors in determining how HLP issues are considered during peace talks. The real or perceived lack of large-scale donor support for helping to resolve HLP disputes and other challenges may also assist in keeping these issues side-lined or off the negotiating table all together. Added to this, peace negotiators may simply view HLP issues as too complex, too technical, and too controversial to justify their inclusion within peace processes or peace agreements. And finally, these issues are still wrongly seen by some peacemakers as effectively discretionary and political in nature, and ultimately as bargaining chips that can be negotiated away if need be to allow compromises to take shape.

23. Despite these perceived disincentives, however, there is growing awareness that although often difficult and time-consuming, the price to be paid of not addressing HLP issues and seeking their resolution, can prove a far too heavy one. If the rights of refugees or internally displaced persons to return to their original homes after conflict are not fully recognised, the residual impact of the conflict concerned may never entirely dissipate, with unresolved HLP rights and claims forming the basis for renewed conflicts. On the other hand, when double-standards demand that some refugee/IDP groups be entitled to return home, while other refugee/IDP groups (perhaps from a different ethnic or religious group with less political influence) are not accorded these same rights, this may also threaten the prospects of long-term peace. When governments or military officials sanction the allocation of land to 'war heroes' or 'ethnic cleansers' and this is not addressed during peace initiatives, while millions of rural and urban poor citizens continue to exist without land or housing rights, this does little to build the basis for sustainable peace or prosperity. If long-term, pre-conflict grievances relating to HLP abuses are not addressed, this too can lead to growing tensions and the outbreak of new conflict. When members of a certain ethnic group are encouraged to enter the area of rival ethnic groups with the intention of confiscating land and resources, once again, the path to conflict has been laid. When peace agreements designed to build peace ignore the HLP crises that invariably exist in any post-conflict country, peacebuilding is likely to only ever be partially successful. This is true everywhere, including Myanmar.

## IV. Including HLP Issues Within Peace Agreements

24. It is thus not surprising that many peace agreements concluded in recent years explicitly address HLP issues. A range of contemporary peace agreements – the Dayton Accords (Bosnia-Herzegovina),<sup>30</sup> the Arusha Accords (Burundi), and agreements concerning Guatemala,<sup>31</sup> El Salvador, Kosovo, Liberia, Mozambique,<sup>32</sup> Sierra Leone, Sudan, Tajikistan<sup>33</sup> and others - explicitly address HLP issues and, increasingly HLP *rights*. (See Box 1) Conversely, agreements that in hindsight should have included specific HLP provisions, but did not - in particular the 1991 Cambodian peace settlement - have been criticized for this serious oversight, which continue to have ramifications to this day.<sup>34</sup> It is vital, therefore, that HLP rights find an appropriate place within the peace agreements eventually concluded between the government of Myanmar and ethnic groups.

25. Although not all recent peace agreements include explicit reference to HLP issues or treat these in a comprehensive manner, the clear trend over time leans toward the *inclusion* of these issues. Several HLP issues appear with relative frequency within peace agreements. These include HLP issues relating to refugee and IDP return, HLP restitution rights and the mechanisms often required to administer and process restitution claims, the reform of pertinent HLP legislation, land reform measures, land tenure issues, the rights of women to equal treatment with respect to HLP rights, customary law arrangements and HLP compensation.

26. The 1992 peace agreement ending the conflict in El Salvador, for instance, is exceptionally detailed in addressing a wide range of HLP concerns which were seen by the parties as fundamental causes of the grievances that led to the emergence of the conflict years earlier (See Box 2). This agreement sought to address issues such as land reform measures, the necessity of new land legislation, land tenure concerns and the inventory of indigenous land allocations. Three years later, the 1995 Guatemala peace accords also required the Government authorities to “adopt or promote measures to regularise the legal situation with regard to the communal possession of lands by communities which do not have the title deeds to those lands, including measures to award title to municipal or national lands with a clear communal tradition. To that end, an inventory of the land tenure situation shall be drawn up in each municipality”.

27. The 1995 Dayton Accords ending the war in Bosnia-Herzegovina remains one of the more far-reaching and surely the most widely studied peace agreement enshrining the rights of refugees to return to their original homes.<sup>35</sup> Although the principles contained in Annex 7 of the Accords clearly fell short of comprehensive implementation and expectations, the various bodies and plans put into effect after 1995 had the cumulative effect of facilitating return home for hundreds of thousands for refugees and IDPs. Building on the sentiments expressed in Dayton, the 2000 Arusha Peace and Reconciliation Agreement for Burundi is noteworthy both for its comparatively comprehensive inclusions of various HLP questions, as well as for its strong expressions of the right of all refugees to have their property restored to them and to be able to return to their homes.

<sup>30</sup> “[A]ll refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”. *General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7 Agreement on Refugees and Displaced Persons (1995)*.

<sup>31</sup> The 1995 Guatemala Agreement on Identity and Rights of Indigenous Peoples, for instance, states: “The rights relating to land of the indigenous peoples include both the communal or collective and the individual tenure of land, rights of ownership and possession and other real rights, and the use of natural resources for the benefit of the communities without detriment to their habitat. Legislative and administrative measures must be developed to ensure recognition, the awarding of title, protection, recovery, restitution and compensation for those rights.”

<sup>32</sup> Section IV of Protocol III to the 1992 General Peace Agreement ending the lengthy civil war in Mozambique, included explicit restitution rights for returning refugees: “Mozambican refugees and displaced persons shall not forfeit any of the rights and freedoms of citizens for having left their original places of residence; Mozambican refugees and displaced persons shall be registered and included in the electoral rolls together with other citizens in their places of residence; and Mozambican refugees and displaced persons shall be guaranteed restitution of property owned by them which is still in existence and the right to take legal action to secure the return of such property from individuals in possession of it.”

<sup>33</sup> The General Agreement on the Establishment of Peace and National Accord in Tajikistan (1997) - Protocol on Refugee Issues stipulates that the “The Government of the Republic of Tajikistan assumes the obligation to reintegrate returning refugees and displaced persons into the social and economic life of the country, which includes the provision to them of humanitarian and financial aid, assistance in finding employment and housing and the restoration of all their rights as citizens of the Republic of Tajikistan (including the return to them of dwellings and property and guaranteed uninterrupted service), and not to institute criminal proceedings against returning refugees or displaced persons for their participation in the political confrontation and the civil war, in accordance with the legislative acts in force in the Republic.”

<sup>34</sup> While the Agreement on a Comprehensive Political Settlement on the Cambodia Conflict (1991) - Part V - Refugees and Displaced Persons - Annex 4 - Repatriation of Cambodian Refugees and Displaced Persons did address some HLP issues in the following terms: “There must be full respect for the human rights and fundamental freedoms of all Cambodians, including those of the repatriated refugees and displaced persons, in recognition of their entitlement to live in peace and security, free from intimidation and coercion of any kind. These rights would include, inter alia, freedom of movement within Cambodia, the choice of domicile and employment, and the right to property”, the failure to address a wide range of additional HLP issues is often believed to have created the conditions for severe HLP abuses that have taken place in Cambodia since the 1991 agreement.

<sup>35</sup> See: Williams, R., ‘Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice’ in *NYU Journal of International Law and Politics*, vol. 37, no. 3., 441, 2006.



Article 8 of the Agreement specifically addresses issues relating to land and other property, in considerable detail, and in many important ways goes considerably further than Dayton in addressing a broader spectrum of HLP issues.<sup>36</sup>

### Box 1:

## HLP ISSUES WITHIN SELECTED PEACE AGREEMENTS

	Refugee and IDP Return/Repatriation	HLP Restitution Rights	Land Reform Measures	Secondary Occupation of HLP	Legislative Repeal and Reform	Specialised Bodies on HLP Issues
Cambodia (1991)	✓					
El Salvador (1992)	✓		✓	✓	✓	✓
Mozambique (1992)	✓	✓				
Liberia (1993)	✓	✓				
Rwanda (1993)	✓	✓				
Bosnia-Herzegovina (1995)	✓	✓		✓	✓	✓
Guatemala (1995)	✓	✓	✓	✓	✓	
Croatia (1995)	✓	✓				
Tajikistan (1997)	✓	✓				✓
Sierra Leone (1999)	✓					
Burundi (2000)	✓	✓	✓	✓	✓	✓
Liberia (2003)	✓	✓				
Sudan (2004)	✓		✓	✓	✓	✓
Great Lakes Protocol (2007)	✓	✓	✓	✓	✓	✓

28. Both the 2004 *Comprehensive Peace Agreement on Sudan* and the 2007 *Great Lakes Protocol on the Property Rights of Returning Persons* also address HLP concerns in considerable detail. Though slow to be implemented, the Sudan agreement established a National Land Commission to resolve outstanding land disputes, to develop land reform policies, to recognise customary land rights and/or law, to assess land compensation claims and to generally advise different levels of government on how to co-ordinate policies on national projects.<sup>37</sup> The 2007 *Great Lakes Protocol* constitutes one of the most detailed such agreements concerning the regulation of HLP concerns and outlines HLP-related principles on: legal protection measures; the recovery and restoration of the property of IDPs, refugees and resettled persons through the establishment of new legislation, claims processes and appropriate HLP registration measures; the protection of the property of returning spouses through new legal procedures ensuring equal protection of women under law with respect to all aspects of HLP rights; the protection of the property of returning children and orphans; the protection of the property of returning communities in recognition of the special needs of pastoralists and other nomadic groups; and the question of compensation for any loss of property where the State concerned is directly responsible for such loss.<sup>38</sup>

<sup>36</sup> "Property rights shall be guaranteed for all men, women and children. Compensation which is fair and equitable under the circumstances shall be payable in case of expropriation, which shall be allowed only in the public interest and in accordance with the law, which shall also set out the basis of compensation; All refugees and/or *sinistrés* must be able to recover their property, especially their land; If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification; Refugees who do not return may receive a just and equitable indemnification if their land had been expropriated without prior indemnification and in contravention of the principle set out in sub-paragraph (a) of the present article; The policy with respect to distribution of State-owned land shall be reviewed so that priority can be given to the resettlement of *sinistrés*; An inventory of destroyed urban property shall be drawn up with a view to making it habitable in order to redistribute it or return it as a priority to the original owners; A series of measures shall be taken in order to avoid subsequent disputes over land, including the establishment of a register of rural land, the promulgation of a law on succession and, in the longer term, the conduct of a cadastral survey of rural land; The policy of distribution or allocation of new lands shall take account of the need for environmental protection and management of the country's water system through protection of forests; and Burundi's Land Act must be revised in order to adjust it to the current problems with respect to land management".

<sup>37</sup> *Comprehensive Peace Agreement - Agreement on Wealth Sharing during the Pre-Interim and Interim Period (2004)*.

<sup>38</sup> *Int. Conference on the Great Lakes Region - Protocol on the Property Rights of Returning Persons (2007)*.

**Box 2:**

## **HLP ISSUES ADDRESSED IN THE 1992 EL SALVADOR PEACE AGREEMENT**

**The 1992 Peace Agreement Between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (1992) addresses a very wide range of HLP concerns in Section 2 (the agrarian problem) of Chapter V, for instance:**

*Lands in excess of the constitutional limit of 245 hectares* - The Government of El Salvador shall transfer rural farmland that has not yet been transferred under articles 105 and 267 of the Constitution of the Republic. It likewise undertakes to ensure that implementation of the relevant constitutional requirements is not evaded by owners of rural holdings in excess of 245 hectares.

*New legislation* - Since the current agrarian legislation is haphazard, contradictory and incomplete, the Parties agree that it must be harmonized and unified into an agrarian code. To this end, the Government shall submit the relevant draft legislation to the Legislative Assembly no later than 12 months after the signing of this Agreement. If it fails to do so, COPAZ shall take on the task of preparing the corresponding preliminary draft.

*The land-tenure system in conflict zones* - In accordance with the New York Agreement, the current land-tenure situation in conflict zones shall be respected until a satisfactory legal solution for the definitive land-tenure system is arrived at. Consequently, landholders shall not be evicted pending agreement on such a solution; moreover, they shall be given financial support to increase agricultural production. In view of the irregularity of the land-tenure system in conflict zones, the Parties agree on the following: *Determination as to who are the "current landholders"*- "Landholders" shall mean those currently occupying and/or working the land in conflict zones.

*Inventory of cases covered by this part of the Agreement* - Within 30 days from the signing of the Agreement, FMLN shall submit an inventory of land or buildings affected by the Agreement. Upon verification that such land or buildings are in fact subject to the provisions of this Agreement, and in accordance with the procedure set forth in the next section, the Government

of El Salvador shall seek to provide a satisfactory legal solution for their final disposal through the voluntary sale of such property by the rightful owners to the current holders, on the terms referred to in section 3 (F) of this chapter. Should a rightful owner not wish to sell his property, the Government of El Salvador shall make use of the legal mechanisms at its disposal to try to resettle the peasants or small farmers on such land as may be available for the purpose and shall, as far as possible, seek to ensure that such land is situated in the same zones.

*Establishment of a Special Commission* - COPAZ shall appoint a special commission whose members shall be of recognized integrity and ability. The special commission, to be formed within 20 days following the signing of this Agreement, shall be entrusted with the following tasks and duties: To verify the inventory of affected land or buildings within conflict zones. Once the inventory has been verified, the special commission shall submit copies to the Government of El Salvador and to COPAZ; Should the need arise, to facilitate the settlement of disputes between current holders and rightful owners; To take any decisions and measures it deems necessary and proper for the prompt and effective fulfilment of the agreements set forth in this chapter.

*Legalization of land tenure* - Except for particularly complex cases, the Government of El Salvador shall legalize the land-tenure situation in conflict zones definitively within six months from the signing of the cease-fire agreement, granting, as appropriate, individual or collective title to the land.

*Payment for lands* - Lands shall be purchased from their former owners at market prices. The sale to the current holders shall be subject to the same conditions as those granted to beneficiaries of the reformed sector. However, special conditions may be agreed to in the interests of the peace process.

29. These are just a small selection of provisions on HLP issues that have found placement within recent peace agreements, all of which in their own ways build a foundation upon which similar provisions may find inclusion within future peace agreements in Myanmar.

## V. Ethnic Actor Perspectives on HLP Rights in the Context of Return

30. Some 30% of the population of Myanmar are members of ethnic minority groups, most of which have been engaged in various degrees of conflict with the central government, more or less since independence in 1948. After decades of conflict, forced displacement and counter-insurgency operations, a series of ceasefire agreements were concluded by the former government of Myanmar and various armed ethnic groups. Now, as an element of the political reform process, various peace processes are underway between government negotiating teams and several of the main ethnic armed groups. As of mid 2013, no formal peace agreements have been concluded, though numerous preliminary discussions have been held between the various parties concerned, and HLP issues have arisen during these talks, though clear positions by neither the government nor the armed ethnic groups have yet to be placed formally on the negotiating table. Levels of poverty remain very high in most ethnic areas, and military activity continues in both Kachin and Shan States, while Rakhine state has been the site of massive violence and displacement in recent months. Trust between the various ethnic groups and the government and military remains generally low, and meaningful confidence-building measures remain imperative. In addition, because many of the ethnic states are strategically located areas of new investment because of their mineral and other resources, there are considerable and realistic fears that new forms of displacement will take place in these areas as further commercial licenses are issued to investors, and discussions on creating special economic zones become ever more concrete. These developments have deepened “concerns about the future of the many displaced persons, refugees and migrant workers in the ethnic borderlands”.<sup>39</sup> Moreover, concerns have been expressed by many that both of the new laws adopted in 2012 - the *Farmland Law* and the *Vacant, Fallow and Wasteland Law* and anticipated foreign investment will lead to greater expropriation of land within ethnic areas.

31. With a view determining in greater detail the views on HLP rights issues of the various ethnic groups engaged in peace dialogues, Displacement Solutions hosted a series of interviews with representatives of the following groups: New Mon State Party (NMSP), Mon Affairs Union (MAU), Mon Women's Organisation (MWO), HURFOM (Human Rights Foundation of Monland), Karen National Union (KNU), ECDF (Ethnic Community Development Forum), Shan Sapawa, KSWDC (Karenni Social Welfare and Development Centre), Shan Health Committee, KESAN (Karen Environmental and Social Action Network), KNPP (Karenni National Progressive Party), KORD (Karen Office for Relief and Development), CIDKP (Committee for Internally Displaced Karen People), KHRG (Karen Human Rights Group), Burma Partnership, Karen Women's Organization, Karen Agriculture Department, and FTUK (Federated Trade Unions - Karen).

32. During these meetings, Displacement Solutions presented the following questions to all interviewees:

- What are your main concerns around HLP issues?
- Are you concerned about the new HLP laws if and when return occurs?
- Does your group have a consolidated policy on HLP themes within peace talks?
- Do you anticipate HLP restitution when return occurs?
- Does your group prefer returning to your original lands or financial compensation or other durable solutions?
- What are your views on how to deal with current occupiers of land originally owned by members of your group?
- Do you have any particular concerns about women's HLP rights?

The remainder of this section provides an overview of the differing points of view of the groups interviewed on how they believe HLP rights will/should be addressed within the broader peace process.

<sup>39</sup> Id, Transnational Institute & Burma Centrum Nederland, Conference Report: *Prospects for Ethnic Peace and Political Participation in Burma/Myanmar* (Bangkok, July 8-9, 2012), p. 4.

## KAREN AREAS

33. On 12 January 2012, the Karen National Union (KNU) and Myanmar government peace negotiators signed an eleven-point ceasefire agreement. Framed by the KNU as a preliminary agreement, it was the sixth such agreement signed in some 60 years of fighting between Karen forces and the Burmese military.<sup>40</sup> After two more rounds of peace talks in 2012, the process remains tenuous. On 4 September 2012, the third round of talks led to KNU and Myanmar negotiators verbally agreeing a code of conduct to govern the ceasefire, with confirmation of the code to come later.<sup>41</sup>

34. Myanmar and Karen civil society organizations assert that the KNU has been aware of the importance of housing, land, and property rights issues within the ceasefire negotiations from the earliest stages. The eleven points agreed in January 2012 include an explicit, albeit very general, mention of land rights<sup>42</sup> – apparently the only mention of land rights in all of the ethnic ceasefire agreements signed thus far – while the KNU is said to have raised land policy very clearly in the second round of negotiations in April 2012. More precisely, the agreement states that the government agrees to “7. Release all political prisoners and provide solutions to settle the land rights issue”. In addition, the Karen Agriculture Department (KAD), one of thirteen departments under the KNU, is working with the Karen Environmental and Social Action Network (KESAN) to use GPS and GIS for land documentation in KNU-held areas. The KNU plans to use this documentation for KNU land titling, and the KNU will use the ceasefire negotiations as a platform for trying to convince the Myanmar government to recognise KNU titles. Among the ethnic groups currently engaged in ceasefire negotiations, the KNU has clearly been one of the most engaged on HLP rights.

35. The KNU's concerns over HLP rights should come as no surprise, as there are a number of pressing land issues in Karen areas. Since the beginning of ceasefire negotiations in early 2012, Karen organizations have documented increased land confiscation due to mining, logging, infrastructure development, and plantation projects. Lack of consultation and compensation, forced relocation and displacement, and unilateral implementation have been highlighted as aspects of this confiscation trend, as businesses with ties to the Myanmar government have sought to pursue investment in areas deemed newly stable due to the ceasefire process.<sup>43</sup> Thus while conflict-related abuses have declined since the opening of negotiations, the talks have contributed to a changing investment climate, which has in turn created conditions for land confiscation. The emergence of land-related abuses in the wake of ceasefire negotiations is a trend that has been noted in other non-Burman areas as well; it is often connected to concerns that the ceasefire process has grounded development in ethnic areas while sidelining discussion about the need for political settlement of long-term grievances.

36. Karen civil society groups have also been vocal about HLP concerns in the context of return and repatriation of internally displaced people (IDPs) and refugees. In a joint statement released in September 2012, a number of Karen CBOs highlighted the importance of having a framework for resolving land issues in advance of refugee repatriation. The statement also notes the importance of land-mine clearance and calls for a more open and inclusive process for consultations and assessments. Indeed, civil society leaders stress that discussions and planning around repatriation have not been open enough, and that they have caused heightened tension and fear among IDPs and refugees. Views on what they want to go back to, and how they want to go back, have not been adequately sought out or understood. Several reports touching on HLP issues have caused particular consternation within Karen civil society: that land has been confiscated to build government-administered resettlement camps in Karen areas; that border-based refugees in Thailand have been told not to speak openly in refugee camps about repatriation; and that industrial zones in a number of sites slated for heavy investment have been discussed as relocation areas for IDPs and refugees.

<sup>40</sup> *Mizzima* (12 January 2012), 'KNU-gov't sign cease-fire agreement', available at <http://www.mizzima.com/news/inside-burma/6402-knu-govt-sign-cease-fire-agreement.html>.

<sup>41</sup> *Irrawaddy* (4 September 2012), 'KNU signs code of conduct with gov't.', available at <http://www.irrawaddy.org/archives/13282>.

<sup>42</sup> KNU (13 January 2012), 'Statement on initial agreement between KNU and Burmese government', available at <http://www.karennationalunion.net/index.php/burma/news-and-reports/news-stories/statement-on-initial-agreement-between-knu-and-burmese-government>.

<sup>43</sup> See, for instance, Karen Human Rights Group, *Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar*, March 2013.

37. These repatriation concerns reflect several realities raised by Karen civil society groups in response to a central question: with all of this discussion around return and repatriation, where will IDPs and refugees actually go? In many cases, displaced people may find it difficult to return to land they consider to be their homeland or original land, either because it remains unsafe due to troop movements, because it is contaminated by land mines, or because settlers from elsewhere, especially upper Myanmar, have moved onto the land. Though civil society groups say restitution would be the preferred remedy for people who have been displaced, the obstacles to achieving it are substantial. Large-scale troop withdrawals, and a framework or process for resolving land disputes – including around questions of people having moved onto land that was abandoned, not to mention related claims for compensation – would both need to be explored in detail. Troop withdrawals have been a difficult subject of discussion in KNU talks with Myanmar peace negotiators, while civil society groups say that the KNU will be looking to press its land demands more assertively in coming negotiations.

38. In lieu of IDPs and refugees returning to areas they see as their original land, remaining possibilities (staying in current locations or going to prescribed resettlement areas run by the Myanmar government) are viewed by those interviewed by Displacement Solutions as largely untenable and undesirable. Ceasefire politics have created a push to close down the decades-old infrastructure for refugee and IDP camps, such that these current locations will soon no longer be an option. As for government-administered resettlement schemes, details remain unclear. Civil society groups note that anyone who returns should be able to do so with a sense of safety and security. With a long history of displacement and human rights abuses in eastern Burma, the Myanmar government – or actors working on its behalf – will face an uphill battle in convincing IDPs and refugees that they have their best interests at heart. While a more open and accountable process for planning return and repatriation would be one place to start, recent statements from Karen CBOs criticizing the planning process attest to the substantial progress that needs to be made in that respect.

39. Clearly, HLP rights and ceasefire politics are closely tied in Karen State. Karen civil society groups working on HLP issues continue to express concern that through the ceasefire process, ceasefire areas essentially become government-controlled areas, which leads to development projects of various kinds. These projects lead to abuses related to and including land confiscation, displacement, and forced labour. Thus the future of HLP rights in Karen State may depend substantially on how ceasefire negotiations evolve. Like other ethnic groups engaged in peace talks, the KNU could be said to include two camps: one more pro-ceasefire, the other more cautious in its approach. These internal politics could be significant. According to many voices in the KNU and Karen civil society, a more united KNU will be better positioned to push for its demands in the peace talks, including demands around HLP rights and land policy.

## **KARENNI AREAS<sup>44</sup>**

40. The Karenni National Progressive Party (KNPP) signed an initial ceasefire agreement with Myanmar government representatives on 8 March 2012, with a more substantial union-level agreement following on 10 June.<sup>45</sup> Of twenty agenda points put forward by the KNPP, seventeen were agreed, and three were shelved. Yet to be resolved, they include government troop withdrawals from KNPP areas, a suspension of hydropower projects on the Salween River in Karenni State, and the opening of new KNPP bases. KNPP representatives have expressed reservations about the peace process and are proceeding cautiously.<sup>46</sup> Of particular cause for concern has been the fact that, rather than reducing or scaling down its presence in Karenni areas since the ceasefire agreements, the Myanmar military has expanded its presence through new battalions and training camps. Thus the question of troop withdrawal is seen as especially pressing for further peace talks.

<sup>44</sup> Meetings with the following organizations in Chiang Mai and Mae Sot, Thailand took place from 3-8 September, 2012: Karenni Social Welfare and Development Centre (KSWDC); Ethnic Community Development Forum (ECDF); Karenni National Progressive Party (KNPP) and Burma Partnership.

<sup>45</sup> *Irrawaddy* (11 June 2012), 'Karennis sign ceasefire with Naypyidaw', available at <http://www.irrawaddy.org/archives/6441>.

<sup>46</sup> *Democratic Voice of Burma* (20 August 2012), 'Armed Karenni group ready to hold more talks with gov't.', available at <http://www.dvb.no/news/armed-karenni-group-ready-to-hold-more-talks-with-gov%E2%80%99t/23362>.

41. The KNPP openly recognises the centrality of housing, land, and property rights to a successful peace process in Karenni State. On land issues in particular, the KNPP points to four factors: the need for full recognition of customary land tenure; the need to issue land titles not just to people in urban areas but also people in remote rural areas; the weakness of ownership protections for peasant families and smallholder farmers, especially since the passage of the two new land laws in March 2012; and the importance of addressing the issue of land that has been confiscated in the past by Myanmar military forces. According to KNPP General Secretary Ku Oo Reh, KNPP land policy coalesces around these four main concerns, and though capacity is limited, the KNPP is interested to pursue land documentation in Karenni areas in order to issue titles (similar to the recent work of the Karen Agriculture Department). He notes as well, however, that the KNPP has yet to really pursue in-depth discussion of HLP rights within the ceasefire negotiations, as he says there have been more fundamental concerns to approach first.



42. HLP concerns in Karenni areas present some contrasts with other ethnic areas. First, land confiscation has largely remained a matter of seizures by the Myanmar military for military purposes, whereas in other areas, increased investment – in natural resources and extractive industries especially – has meant that private companies are driving land confiscation more than the military now, although these companies are often closely tied to the military and benefit greatly from military support for their projects. In Karenni areas, megaprojects on the scale of special economic zones and major hydropower projects are less feasible due to rugged terrain and distance from markets and infrastructure. Relatively small-scale mining and logging, along with overland border trade with Thailand, are central to market activity in Karenni areas. Thus increased land confiscation on the backs of ceasefire negotiations in other areas is less an issue here, as companies do not see the area as ripe for large-scale investment. Less investment generally translates into less land confiscation, though the military is still seizing land. Karenni leaders point to a military training centre, the establishment of which included seizure of a reported 2,700 acres of land.<sup>47</sup>

43. Other contrasts include how villagers raise concerns to the government and the issue of abandoned land being occupied by others since the displacement of its original cultivators. On the former point, Karenni leaders note that the KNPP takes seriously the need to listen to villagers in part because villagers have no other way of raising complaints to the Myanmar government – whereas in other areas ethnic CBOs have highlighted local people increasingly addressing concerns to elected members of parliament. It would seem that in Karenni areas villagers have looked less to the emerging political system for redress, and continue to see the KNPP as their main advocate.

44. On the latter issue of current land occupation, Karenni leaders stress that land abandoned during displacement has largely not been occupied by new settlers, as immigration from lowland areas to Karenni areas is more difficult and less common than movements from Burman areas to other ethnic areas, which are generally less remote and easier to access from lowland and central areas. This dynamic has implications for questions of resettlement and restitution. The KNPP and the Karenni Social Welfare and Development Centre (KSWDC) both suggest that IDPs who have remained unstable in their movements since being displaced are likely to seek a return to what they see as their original land, which though not yet secure due to lack of Myanmar troop withdrawals, may nonetheless be unoccupied. Refugees from camps in Thailand, on the other hand, have often long been settled away from their land in Karenni State; they may be more likely to see a new location, rather than their original land, as a better resettlement option within the context of return and repatriation.

45. The KNPP is planning for the prospect of voluntary repatriation. Surveys and assessments have been discussed, as there is a recognised need to talk more with local people and better understand their desires. The KNPP also wishes to ensure that they will be able to provide adequate services, such that they see resettlement to remote highland areas as a more difficult option than relocation to areas where more population concentration will be possible. Karenni women's organisations, such as the Karenni National Women's Organisation, have yet to raise women's rights in the specific context of HLP concerns and the ceasefire process. However, he emphasises that the KNPP is in close contact with women's organisations, and the party is supportive of the need to consider women's HLP rights within the peace talks.

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<sup>47</sup> See *Kantawaddy Times* (20 August 2012), 'Govt troops deploy tanks in Karenni', available at <http://ktimes.org/en/news/regional/item/221-govt-troops-deploy-tanks-in-karenni>.

46. While the KNPP is seen as a genuine and principled party to the peace talks, Karenni community-based organisations (CBOs) have come together and sought to influence the ceasefire negotiations. Like Shan and Karen CBOs, Karenni CBOs released a statement outlining cautious support for the peace process, but also a set of concerns.<sup>48</sup> Issued days before the initial agreement in March 2012, the statement stresses the need for the Myanmar government and the KNPP to remove all landmines before any concerted repatriation takes place. The statement also calls for the review and suspension of all large-scale development projects in Karenni areas until a political settlement is reached. From the standpoint of land confiscation and development-induced HLP abuses, the attention to development projects speaks to an awareness of the potential – already realised in a number of non-Burman areas – for the ceasefire process to result in violations of HLP rights, insofar as development projects have increased in ceasefire areas elsewhere in Myanmar, and these projects have proved to be new drivers of land confiscation and land loss at local levels.<sup>49</sup>

## **MON AREAS**<sup>50</sup>

47. When the New Mon State Party (NMSP) signed a five-point ceasefire agreement with Myanmar government negotiators on 1 February 2012, it was the seventh agreement achieved by the Myanmar government since it began talks with ethnic armed groups in December 2011. One of the more limited ceasefire agreements negotiated, the five points cover cessation of open conflict, peace delegation plans for national-level peace talks, the opening of NMSP liaison offices, restrictions on movement of weapons, and some territorial negotiations.<sup>51</sup>

48. This initial agreement is not strong on HLP rights. The NMSP says they have sought to raise land tenure and land rights issues in talks with the government, and although they have been rebuffed thus far, they will continue to raise questions around land and restitution, especially when talks become more advanced. Mon civil society organisations suggest the NMSP is genuinely concerned about issues relating to land and HLP rights, but in these initial stages, they have prioritised other issues they see as more pressing (such as basic concerns around a halt to fighting and negotiations around territorial control). Nevertheless, if and when the NMSP does more actively engage HLP questions within ceasefire talks with the Myanmar government, CBOs stress that the NMSP will need a more coherent set of policies around HLP rights. Currently, genuine concern notwithstanding, the party lacks an organised stance around HLP rights, whether in the context of ongoing land confiscation or discussions around return and repatriation of refugees and internally displaced people (IDPs).

49. HLP concerns in Mon areas, as elsewhere in Myanmar's non-Burman areas, break down into land confiscation in largely government-controlled and mixed-administration areas, and growing debates around resettlement of displaced people. Mon CBOs have documented increasing land confiscation in the past 2 years, highlighting private-sector investment in plantation agriculture (especially rubber) and the involvement of companies with close ties to the Myanmar government.<sup>52</sup> Activists and community leaders express concern that peace talks and the Naypyidaw-led reform process have created a climate of opportunity for companies seeking large-scale land acquisitions in Mon areas – to the detriment of local communities. Especially in and around Dawei, Ye, Kyaikmayaw, and Yaybyu townships, land loss has become a pressing issue for local people. Sangkhlaburi-based CBOs worry that the peace talks and ceasefire negotiations are creating a situation where the Myanmar government and government-tied companies are consolidating control in Mon areas, leading to an increase in land-related abuses for local communities.

<sup>48</sup> See 'Position statement on ceasefire talks', press release issued by Karenni CBOs on 6 March 2012 and circulated by Burma Partnership, available at <http://www.burmapartnership.org/2012/03/karenni-cbos-position-statement-on-cease-fire-talks/>.

<sup>49</sup> See also ECDF (10 April 2012), 'Statement on peace and development in Burma', a series of policy recommendations regarding the relationship between development projects and the peace processes, available at [http://www.shanland.org/index.php?option=com\\_content&view=article&id=4580:statement-on-peace-and-development-in-burma&catid=mailbox&Itemid=279](http://www.shanland.org/index.php?option=com_content&view=article&id=4580:statement-on-peace-and-development-in-burma&catid=mailbox&Itemid=279).

<sup>50</sup> Meetings were held with the following organizations in Sangkhlaburi, Thailand, 30-31 August, 2012: New Mon State Party (NMSP), the Mon Affairs Union (MAU), Human Rights Foundation of Monland (HURFOM) and the Mon Women's Organization.

<sup>51</sup> *Mizzima* (1 February 2012), 'New Mon State Party, gov't sign preliminary agreement', available at <http://www.mizzima.com/news/inside-burma/6521-new-mon-state-party-govt-sign-preliminary-agreement.html>.

<sup>52</sup> See *Karen News* (25 August 2012), 'Mon political parties to fight land confiscation', available at <http://karennews.org/2012/08/mon-political-parties-to-fight-land-confiscation.html/>.



50. Meanwhile, Mon leaders agree that in the past, the primary actor seizing land from local people was the military, engaged in campaigns against the NMSP and other armed actors in Mon areas. In recent years, however, and especially in the last year, private companies – albeit with close relations with the government – have increasingly been the actors to whom local communities are losing land. In addition, CBOs and the NMSP are very concerned about the two new land laws, the *Farmland Law* and the *Vacant, Fallow and Virgin Lands Management Law*, which they see as strengthening the hand of the government and the private sector against ownership protections for local people.<sup>53</sup>

51. Discussions around return and repatriation of refugees and IDPs have yet to reach an advanced stage, though many people have expressed their wishes to reclaim their original lands. CBOs and the NMSP believe, however, that for the most part, it will be difficult for people to return to land they see as their original land – most of it is now occupied by other people – so questions around compensation and resettlement to new locations will be paramount if restitution proves to be materially impossible. The NMSP maintains that the Myanmar government has offered them land for this purpose, but as they can see it is not unoccupied, they refuse to accept it. They are seeking to arrange for other new plots of land instead.

52. CBOs note that compensation will likely prove a difficult path. Villagers seeking compensation for land confiscation have met with limited success, especially with respect to seizures for military purposes that took place some years ago. The government stance is that the state owns all land in Myanmar, such that all such seizures are legal under the law. Local people are making connections with legal advocates based in Yangon, and they are raising their concerns to elected Members of Parliament in Naypyidaw. Still, the government's stance on the legality of past land seizures has proved a formidable obstacle thus far. For displaced people seeking to gain compensation for land they abandoned or from which they fled in the past, current channels have little to offer. A mechanism for addressing this issue could be discussed in the peace process itself, but the NMSP has yet to be able to raise land concerns in any concerted way.

53. Mon CBOs stress that land confiscation and the resettlement of displaced people are both issues that affect women and men differently. Land confiscation is a driver of out-migration from Mon areas, with Mon women who don't migrate facing increased family and financial burdens after men move elsewhere for work. Further, with few job opportunities and only threadbare education in rural areas, the return of refugees and migrants could increase inequalities in Mon communities, as better-educated and wealthier people who return will be better positioned to prosper in the current situation. Gaps in income and education, Mon leaders point out, are also gender gaps, as men are more likely than women to gain better jobs and more education. Unless measures are taken to close gaps in opportunity, return and reintegration of refugees and migrants is likely to exacerbate gender inequalities in Mon areas. As a result, CBOs are concerned that current conditions are not yet suitable for a broad movement of people back into Mon areas.

## **SHAN STATE**<sup>54</sup>

54. Since the Myanmar government began ceasefire negotiations with armed ethnic groups in late 2011, the Shan State Army (also known as the Restoration Council of Shan State/Shan State Army, or RCSS/SSA) has signed a number of agreements with the government. These include a preliminary agreement in December 2011, several smaller agreements in January 2012, and a twelve-point agreement on 19 May 2012 that stands as the main agreement signed thus far.<sup>55</sup> However, clashes between the SSA (particularly SSA-North) and the Myanmar military have continued, leading experts to worry that the peace process in Shan State is at best fragile, and at worst on the verge of failure.<sup>56</sup>

<sup>53</sup> See for example HURFOM (29 May 2012), 'Examination and critique of the 2012 farmland bill', available at <http://rehmonnya.org/archives/2238#more-2238>.

<sup>54</sup> Meetings with the following organizations in Chiang Mai and Mae Sot, Thailand were held from 3-9 September, 2012: Shan Sapawa Environmental Organization; Ethnic Community Development Forum (ECDF); Shan Health Committee (SHC); and Burma Partnership.

<sup>55</sup> See *Mizzima* (2 December 2011), 'Shan State Army signs ceasefire agreement', available at <http://www.mizzima.com/news/breaking-and-news-brief/6245-shan-state-army-signs-cease-fire-agreement.html>; *Shan Herald Agency for News* (18 January 2012), 'SSA and regime sign new agreement', available at [http://www.english.panglong.org/index.php?option=com\\_content&view=article&id=4351%3Assa-and-regime-sign-new-agreement&Itemid=301](http://www.english.panglong.org/index.php?option=com_content&view=article&id=4351%3Assa-and-regime-sign-new-agreement&Itemid=301); *Shan Herald Agency for News* (30 January 2012), 'Naypyitaw-SSA North agree to uphold Three Causes on the basis of Panglong', available at [http://www.english.panglong.org/index.php?option=com\\_content&view=article&id=4380%3Anaypyitaw-ssa-north-agree-to-uphold-three-causes-on-the-basis-of-panglong&Itemid=301](http://www.english.panglong.org/index.php?option=com_content&view=article&id=4380%3Anaypyitaw-ssa-north-agree-to-uphold-three-causes-on-the-basis-of-panglong&Itemid=301); *Mizzima* (24 May 2012), 'A translation of Shan peacemaking agreement', available at <http://www.mizzima.com/research/7176-a-translation-of-shan-peacemaking-agreement.html>.

<sup>56</sup> *irrawaddy* (22 August 2012), 'Shan ceasefire starts to show cracks', available at <http://www.irrawaddy.org/archives/12107>.

55. Among Shan civil society, as with civil society from other non-Burman areas, there is great concern that the ceasefire process has created conditions for the erosion of HLP rights. In Shan State, large-scale development projects are widespread, such as the Tasang Dam in central Shan State – set to be Southeast Asia's largest dam, and already the largest single investment project in Myanmar – and the Shwe gas pipeline, which, beginning on the Rakhine coast, cuts across northern Shan State and into China. With investment prospects seen as improving as a result of peace talks, civil society groups have sought to emphasise that these and other megaprojects are drivers of displacement and land loss for local communities, while even stability is elusive – groups say megaprojects are fuelling conflict over territory and resources.<sup>57</sup> Continuing skirmishes between the SSA and the Myanmar military have been framed as jockeying over strength and influence in areas rich with development potential, while development-related impacts to communities' HLP rights have been little discussed on either side of the peace negotiations. Charges of cynicism abound; civil society voices see both the SSA and the Myanmar government as using the ceasefire platform for their own ends.

56. Discussions on return have yet to reach an advanced stage. However, in late August 2012, plans surfaced to send refugees from Koug Jor camp in northern Chiang Mai province to a resettlement site in Mong Hta, in Shan State. This caused widespread alarm among camp residents and Shan civil society. Civil society groups put out a statement faulting the plan to send refugees to an area they say remains an active conflict zone,<sup>58</sup> while individuals close to the plan say discussions are only at a very preliminary stage, and no refugee will be repatriated to an unsafe area against her or his will. Though resettlement has become something of a tendentious issue, there is broad agreement on the need to better understand local people's desires and concerns around return and repatriation. Leaders in the Shan community say IDPs and refugees, as with displaced people elsewhere in Myanmar, would likely prefer to return to where they came from, though in many instances that land will be still insecure or occupied by someone else now. In recent months Shan civil society has emphasised the impracticalities of return, at least in the short term, rather than a vision for how it might take place. The SSA, meanwhile, is thought to have little by way of coherent policy around HLP rights to be pursued in peace talks.

57. In meetings and in a number of statements, Shan community leaders stress that at the heart of their concerns over the ceasefire process is the pursuit of development projects before the resolution of long-standing political grievances.<sup>59</sup> This 'development before politics' approach can be seen in statements from Myanmar peace negotiators claiming that economic development in ethnic areas will lead to rebel groups laying down their arms<sup>60</sup> – a claim long disputed by ethnic civil society. In contrast, civil society groups criticizing the peace process – certainly including Shan civil society – often call for a suspension of large-scale development projects until genuine political settlement has been reached and adequate safeguards put in place. For these groups, unless there is a rethinking of the process that puts real political dialogue before the pursuit of development projects, the peace process will remain a factor helping to drive resource conflict and abuses of local communities' HLP rights. In Shan State, home to a preponderance of megaprojects, this dynamic has become a matter of grave concern.

<sup>57</sup> See statement titled, 'Joint statement on current political situation and peace processes by community based organizations from Shan State, Burma', released on 12 June 2012, available at <http://www.shanwomen.org/2011-12-10-17-10-22/our-recent-activities/249-joint-statement-on-current-political-situation-and-peace-processes-by-community-based-organizations-from-shan-state-burma.html>.

<sup>58</sup> See statement entitled, 'Shan community groups: Don't push refugees back into active war zone', released on 27 August 2012, available at [http://www.english.panglong.org/index.php?option=com\\_content&view=article&id=4901:shan-community-groups-dont-push-refugees-back-into-active-war-zone&catid=mailbox&Itemid=279](http://www.english.panglong.org/index.php?option=com_content&view=article&id=4901:shan-community-groups-dont-push-refugees-back-into-active-war-zone&catid=mailbox&Itemid=279).

<sup>59</sup> See statement entitled, 'Shan community groups: Don't push refugees back into active war zone', released on 27 August 2012, available at [http://www.english.panglong.org/index.php?option=com\\_content&view=article&id=4901:shan-community-groups-dont-push-refugees-back-into-active-war-zone&catid=mailbox&Itemid=279](http://www.english.panglong.org/index.php?option=com_content&view=article&id=4901:shan-community-groups-dont-push-refugees-back-into-active-war-zone&catid=mailbox&Itemid=279).

<sup>60</sup> See for example 'Joint statement on current political situation and peace processes by community based organizations from Shan State, Burma', cited above. See also 'Shan CBOs reject Naypyitaw's peace conditions', statement released 30 August 2012, available at <http://www.bnionline.net/index.php/news/shan/13621-shan-cbos-reject-naypyitaws-peace-conditions-.html>.

## VI. Government of Myanmar Perspectives on HLP Rights in the Context of Return

58. It is clear from various discussions with government officials and others involved in the peace processes, that while reformers within the government may wish to secure peace agreements recognising a wide range of rights, including HLP rights, other more conservative voices, may see the entire peace process as a threat to their own positions and those of other actors who may have benefitted from conflicts in the past. Viewed in the context of HLP rights issues, therefore, hardliners will undoubtedly seek to sideline as many HLP issues from the peace agreement process as possible, while more moderate voices will aim to find common ground on these delicate areas of negotiation. There is agreement that land issues lie at the core of virtually all of the ethnic conflicts, but how to address these questions remain very much unresolved, without any clear and concrete results yet achieved. Though a range of peace agreements have been signed to date, none of these systematically address HLP rights issues. Indeed, it is clear that other than continuing to accept both the *de jure* and *de facto* status quo in terms of land arrangements in conflict and ceasefire areas, the government has to date not issued any specific policy on how best to address the HLP rights demands of its negotiating partners.

59. Land remains such a sensitive, multi-layered and complex issue, that though all parties understand its importance, the government has yet to formulate any concrete policies or positions on these questions during the negotiations process. While no policy exists in this regard, there is anecdotal evidence that when pushed, the government has taken the position that the return of refugees and IDPs and the restitution of their homes, lands and properties will largely be seen as 'materially impossible' due to two grounds. First, because in accordance with prevailing law, the State ultimately owns virtually all land within the country, and thus land claimed by returning refugees and IDPs as their own belongs to the State and not the individual claiming it. While secondly, it is argued that because the acquisition of land formerly possessed by refugees and IDPs and subsequently acquired by the State or military once refugees and IDPs had fled was carried out in accordance with the law prevailing at the time, that the confiscation was legal and thus in no need of reversal. Moreover, because of entrenched vested interests in many parcels of land subject to possible refugee and IDP claims (because of its economic potential and the presence of gems, minerals, oil and gas), it is clear that the interests of the State to treat refugee and IDP land claims in a fair and equitable manner are not likely, at least at this stage.

60. In terms of the parameters of law within which the government presumably feels obliged to operate within, the 2008 Constitution does not explicitly recognise citizen's rights to HLP guarantees, but it does enshrine a number of rights of direct relevance. Chapter VIII of the Constitution outlines fundamental rights and duties of citizens, and contains a number of provisions that are relevant to the framework of housing, land and property rights.<sup>61</sup> In terms of specific HLP laws approved by the current government, among the very first new pieces of legislation by the Thein Sein regime, new land laws were adopted by the reformist Government in March 2012. The *Farmland Law* establishes a system of land registration<sup>62</sup> for farmers that ostensibly provides land use certificates that, once secured (bearing in mind that only 15% of farmers currently hold such certificates), creates rights to sell, exchange, access credit, inherit and rights to lease the land concerned, but no rights to outright freehold ownership, with a few notable exceptions. While superficially positive in terms of enhancing farmer's rights concerning land, the prevailing view is that this new law will not provide sufficient land tenure security for farmers as these rights fall well short of providing full and enforceable protection against arbitrary and forced displacement or land confiscation, combined with the fact that Government retains the power to reverse the user certificates if any of the strict conditions of use are not complied with in full.

<sup>61</sup> Secs. 347. The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection; 348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth;...353. Nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person;...355. Every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law; 356. The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired; 357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution;...370. Every citizen has, in accord with the law, the right to conduct business freely in the Union, for national economic development; and...372. The Union guarantees the right to ownership, the use of property and the right to private invention and patent in the conducting of business if it is not contrary to the provisions of this Constitution and the existing laws.

<sup>62</sup> Under Section 4, "A person who has permission of right to use farmland shall have to apply for getting the Land Use Certificate to the Township Land Records Department Office passing it through the relevant Ward or Village Tract Farmland Management Body".



The general consensus of observers is that the law sacrifices security of tenure for commercial interests, and that the law will fail to successfully address widespread land grabbing and other HLP rights violations.<sup>63</sup> In addition, the *Farmland Law* sets up an ill-defined administrative scheme that lacks the kinds of safeguards that are necessary to a stable, HLP rights-protective land ownership administration system, and further denies access to independent judicial review. The vague rules with respect to farmers' obligations, the multi-layered appeals process with each appellate level appointed by the same central authority and the harsh penalties provided by the law make the process quite complex and the consequences severe. This will inevitably make refugees and IDPs who have to deal with the administrative apparatus wary and intimidated. A simpler, more user-friendly and rights-protective process would be far preferable; but even a simple administrative and dispute resolution process can be intimidating to people who lack the education and experience to navigate through it. The *Vacant, Fallow and Wasteland Law (2012)* adopted at the same time as the *Farmland Law*, allows leases of State land classified as 'vacant, fallow or wasteland' for 30 year periods. It sets a lease limit of 5000 acres at any one time, with a total maximum amount of 50,000 acres for any single person or entity. Both nationals of Myanmar and foreign entities can lease land under this law subject to a two-step process involving approvals from the Myanmar Investment Committee and then the Land Allotment Committee. Some have claimed that up to half of the land in the country could ostensibly be classified as technically 'fallow', which, if correct, provides a very worrying indication that displacement may become rampant as the new law is implemented.<sup>64</sup>

61. While the new legislation slightly expands the rights available to those in rural areas, it is important to reiterate that without either a deed of title or legal registration of rights in land, those seeking to return to the land in question are effectively without rights to the land concerned under statutory law. Because only 15% of those dwelling in rural areas (from where most refugees and IDPs hail) can show a land registration document, and the fact that many in the rural sectors of the country live under customary land arrangements that are not adequately protected under domestic laws, it is clear that refugees and IDPs are tremendously vulnerable to HLP rights abuses, unless they are effectively addressed. Moreover, according to one poll coordinated by the NGO EcoDev, some 10% of all farmers are experiencing various forms of land disputes, most of which under prevailing law, cannot be resolved by the courts thus raising questions about the right to an effective remedy in the event of alleged HLP rights violations. And although there have been several noted cases of formerly confiscated land being restituted to those from whom it was taken (amounting to several thousand acres of land thus far), often due to initiatives from the Forest Department which appears to be increasingly intent on recovering land from private sector investors which was acquired under suspicious circumstances, the legislative and *de facto* situation in the country is such that HLP rights remain far too easy to violate with impunity.

62. Conversely, and on a more positive note, several new HLP bodies have been established by the government since 2011, while additional organs have also been proposed, all of which point to the Government's awareness of the problems within the HLP sector and are indicative that actions are underway to at least begin to address these many problem areas, and at least some of these should filter through to the peace processes. Importantly, in July 2012 a Cabinet-Level *Land Allotment and Utilization Scrutiny Committee* was established to examine national land-use policy, land-use planning and the allocation of land for investment. The Committee is headed by the Ministry of Environmental Conservation and Forestry. Equally important in terms of official recognition of the importance of the land issue, the Government also formed a *Land Confiscation Inquiry Commission* in July 2012 to examine the question of land confiscation/grabbing, and whether land acquired in this manner was carried out consistent with the law, if the lands concerned were used for their intended purpose, and if fair and equitable compensation was paid. Similarly, though not specifically established to deal with HLP problems, the Government's Rule of Law Committee, headed by Aung San Suu Kyi, has received more than 3,000 complaints from citizens across the country since its formation. The Committee's secretary Win Myint has noted that most of the petitions filed concerned land confiscations and complaints directed at the judiciary and executive authorities. According to the secretary, more than 2,000 of the complaints have been verified and forwarded to the concerned

<sup>63</sup> Several aspects of the law undermine farmer tenure security. Chapter II, section 8 and Chapter III, section 9(a) of the Law, for instance, permit privately negotiated property transfers for the first time since the adoption of the *Land Nationalisation Act of 1953* (which was importantly repealed under the new law). This relaxation of the Government role in determining land transfers exposes farmers, particularly those who are poor, to the temptation to sell their rights to use the land for short-term gain and makes them vulnerable to displacement by speculators and large-scale corporate agricultural interests.

<sup>64</sup> For an overview of some of the structural flaws in both of the 2012 land laws, see: *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012, 13-14.

government departments. A majority of the land grabs that were reported to the committee detailed incidents that occurred during the former military government's reign. "We are going to follow up on the cases with the concerned departments after giving them a timeframe for inquiry on the matters. Otherwise we have to talk with concerned union-level officials," said Win Myint.<sup>65</sup> Similarly, the National Human Rights Commission has also indicated that the vast majority of complaints it has received over the past year have also concerned HLP issues.

63. While these new bodies and recent proposals are clearly positive steps in the right direction, given the substantial flaws within the new legislation, it is clear that revisions to these laws will be required, and preferably, a new comprehensive HLP law should be pursued to provide a new and invigorated start to securing the HLP rights of the population as a whole.<sup>66</sup> This would also benefit the peace processes by creating legislative clarity that is currently lacking. One report recommends the following measures be taken to improve land legislation in Myanmar: better protection of smallholder rights, improving land titling procedures, recognizing existing land use, and improving the system of land classification.<sup>67</sup> While another paper suggests the government of Myanmar undertake a number of targeted measures to address some of the key HLP challenges facing the country, including creating a land value tax to prevent speculation, setting (temporary) limits on the size of acceptable land acquisitions, strong and public political denunciations of the practices, expanding security of tenure protections under current and future legislation, requiring long-term occupation of land prior to providing planning permission, beginning the land reform process urgently through the passage of a new HLP law, considering community land trusts as one of several viable alternatives to outright private property ownership and jointly co-hosting a national HLP summit.<sup>68</sup> These and other measures would go some way towards creating an HLP legal and administrative framework within Myanmar that will simultaneously benefit the people of Myanmar and increase the likelihood that returning refugees and IDPs will be able to enjoy their legitimate HLP rights.

64. Recent reports clearly indicate that land confiscation, non-consultation with affected communities, the non-payment or inadequate payment of compensation and a structural legal bias against communities in favour of more powerful interests such as those of the military, state organs and large companies (both national and international in nature) continue to plague huge areas of the country, in particular within ethnic areas.<sup>69</sup> Moreover, the recently approved *Foreign Investment Law* (adopted 2 November 2012)<sup>70</sup> provides the legislative framework for new investment by international bodies in Myanmar, and will need to be applied in a manner that does not negatively affect the prospects of refugee and IDP return.<sup>71</sup>

<sup>65</sup> Aye Nai, 'Rule of Law Committee deluged with complaints' at <http://www.dvb.no/news/rule-of-law-committee-deluged-with-complaints/25806>, 16 Jan 2013.

<sup>66</sup> *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012.

<sup>67</sup> *Id.*

<sup>68</sup> Displacement Solutions, *Guidance Note on Developing Policy Options for Addressing Land Grabbing and Speculation in Myanmar* (July 2012).

<sup>69</sup> Supra, Karen Human Rights Group, *Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar*, March 2013.

<sup>70</sup> Beyond the provision of a five-year tax-exemption for foreign investors and a range of other measures designed to stimulate foreign investment, the law explicitly addresses land questions in several of its key clauses. These include: *Sec17. The duties of the investor are as follows: ... (d) using the land that he is entitled to lease or to use in accordance with the rules and regulations prescribed by the Commission and the terms of agreement; (e) sub-leasing and mortgaging the land and buildings or transferring shares or business for doing business under the permit with the term of the business enterprise, to any other persons for that investment only with the approval of the Commission; (f) undertaking no alteration to the natural surface or undulating condition of the land that the investor is entitled to lease or to use without the approval of the Commission; (g) reporting immediately to the Commission if natural resources or antiquities not relating to the permitted enterprise and which are not included in the original agreement are found above or under the land which he is entitled to lease or use, if Commission permits can continue to operate on such land, and if not, shifting to the substituted area; (h) carrying on the business in such a way as not to cause natural, environmental and water/air pollution in accordance with the existing laws in regard to the investment. ... Chapter XIV – The right to use land. 31. The Commission may permit the investor to lease the land or to use land for the term actually required based on the category of business, industrial business or agricultural, livestock breeding business and investment volume up to initial 50 years.*

<sup>71</sup> Several additional sections are also of relevance: *Sec. 2(m) – The following expressions contained in the Law shall have the meanings given hereunder: ... (m) The person entitled to lease land or the person entitled to use land means the person who is entitled to lease from the State, which is the owner of all land, and all natural resources existing above ground, underground, above the water, underwater and in the atmosphere in the State, any land for a stipulated period of time after paying the stipulated rent to the State in order to carry on any business, or the person permitted to carry on any agricultural or animal husbandry business.... Sec. 4. The Commission may, with the prior approval of the Government, prescribe the following investment activities as restricted or prohibited activities: (a) activities relating to the cultural traditions and customs of national races in the State; (b) activities that may affect the health of the people; (c) activities that may affect environment and ecosystem; (d) activities by which toxic water materials may be brought into the State; (e) factories where toxic chemicals are produced or activities that use toxic chemicals in accordance with the international conventions; (f) services and producing activities running by the citizens according to the rule of law; (g) activities of utilizations to be carried, drugs, unrecognised technologies to be applied or making assessment in abroad; (h) activities of land and short run and agriculture to be run by the citizen prescribed under Law; (i) Livestock that can be run by the citizen under rule of law; (j) fishery in Myanmar waters that can be run by the citizen according to the prescribed rule of law; (k) activities of foreign investment to be run within ten miles of boundary line adjacent to other nations and the state territory apart from designated economic zone with the permission of Union Government.... 12. The duties of the Commission are as follows: ... (h) Commission shall know for taking action on finding cultural heritage or natural resources exclusive of the contract unrelated with the activities permitted inland and water.... 28. The Government guarantees that an economic enterprise formed under a permit shall not be nationalised during the term of the contract or during an extended term, if so extended except when action will be taken in the interests of the public by payment of compensation in terms of value calculated at the prevailing market rates.... 32. The Commission may permit to the investor who is desirous to continue to carry out after the expiry of the term permitted to the investor under section 31, to extend one consecutive term of 10 years based on investment volume and category of business and another 10 years after the expiry of such first term; 33. The Commission may, for the purpose of promoting foreign investments within the State, allow investment to be made for any type of business on the land legally registered in the name of the person, who is entitled to lease land, or the person who is entitled to use or lease land, in accordance with the existing laws with the prior approval of the Government; 34. The Commission may from time to time prescribe the land lease rates in respect of lands owned by the Government Departments and Government organizations with the prior approval of the Government; 35. The investor has the right to carry on agriculture business to produce crops on the agricultural lands that the citizens are entitled to work only by concluding a joint venture agreement with the citizen investor under the agricultural contract farming system, according to crop seasons by way of cooperation for mutual benefit; and 36. With a view to promoting economic development throughout the country, the Commission may, with the prior approval of the Government, allow those, who invest in the regions that are less developed with difficult means of communication and poor infrastructure, a period of land lease or of land use longer than that permitted under this Law.*

## VII. Specific HLP Rights Issues Likely to Face Peace Negotiators in Myanmar

65. HLP issues may not be the key issue to resolving every conflict, but these concerns are nevertheless indisputably part of the causes, consequences and cures of conflict wherever it may occur, including Myanmar. Systematically addressing HLP concerns within the context of peacemaking will assist in ensuring that peace processes actually incorporate the principles and steps required to successfully grapple with these concerns. Peace negotiators who appreciate the importance of these issues and who can properly evaluate HLP challenges within both rights-based frameworks and the context of overall peace initiatives, will facilitate the conclusion of peace agreements that seek to address these key causes of the conflict concerned, and which pave the way to the emergence of new post-conflict realities in former conflict areas that are less likely to degenerate into renewed conflict or HLP abuses. Peace negotiators will always face an array of both tactical and strategic questions in reaching an eventual agreement amongst opposing parties, but at its core must be an understanding of how critical it is to get the HLP equation right in all of its complex facets. As the foregoing analysis has amply shown, there are many areas of emerging disagreement on HLP issues, and these will need to be carefully bridged by negotiators to ensure that all reasonable perspectives are taken fully into account.

66. Peace negotiators in Myanmar will invariably need to consider a range of crucial HLP questions in carrying out their work and in deciding precisely how to respect and protect HLP rights within peace processes: How do negotiators get the information required to make major judgments about how best to grapple with HLP issues? Does every HLP issue need necessarily to be addressed within peace agreements or are there compromise issues within the HLP sector? How can an eventual peace agreement which includes reference to HLP concerns best anticipate and reduce the likelihood of non-implementation? Each of these and other questions will always arise during the negotiation process, and it will be important for negotiators to address them in appropriate ways based on the many previous efforts to enshrine these concerns within agreements ending conflict affecting the expansive ethnic areas in the country. Indeed, as noted above, peace negotiation teams from both the government of Myanmar and ethnic actors have the benefit of two decades of peace agreements that have increasingly and incrementally addressed more and more HLP issues as the understanding of the crucial links between HLP rights and peace have grown.

67. Peace agreements in Myanmar are not likely to succeed without HLP issues being addressed in a manner consistent with their foundations in human rights and other legal domains, and in recognition of the need to ensure residential justice for any HLP abuses that may have occurred during the conflict concerned. Doing so will require extensive skills and patience. It will be important for negotiators from all sides to maintain appropriate levels of flexibility in seeking to reach agreements, but not at the expense of HLP rights issues, which are, after all not only human rights concerns, but also development, economic, justice and rule of law issues all rolled into one. To achieve consensus among the negotiating parties on these often complex concerns, it will be vital to address HLP issues at the outset of negotiations, rather than at later more delicate stages of the process. Given the high stakes involved in addressing certain HLP themes, in particular when the restitution or property, payment of reparations and transfer of large economic assets is involved, there is often hesitancy by negotiating parties to come to an immediate agreement on HLP concerns, and this appears also to be the case in Myanmar today. Such circumstances may call for the approval of interim measures that can be taken during the negotiations such as preventing the illegal occupation of refugee or IDP property and signalling that the parties agree in principle to resolving questions of displacement, HLP abuse and relevant HLP disputes and claims.

68. During and in the aftermath of conflict, few sectors are as vulnerable to fraud, corruption and illicit activity as the HLP sectors. Illegal land confiscation and expropriation and subsequent land grabbing, violent forced evictions of the urban and rural poor, the allocation of private and State land to 'war heroes', and many other types of HLP manipulation can and do occur within the context of conflict and the overall breakdown of law and order. All ethnic actors with whom Displacement Solutions spoke in the preparation of this report expressed concerns that these practices continue in ethnic areas. These activities (which have serious human rights consequences) can easily

threaten fragile ceasefires and can as easily develop into serious HLP disputes, which, if not handled properly can lead to renewed conflict. Peace negotiators have important roles to play in preventing such developments. Building preventative measures directly into peace agreements and implementation arrangements can be extremely beneficial in this regard. A number of measures can be envisaged, including the placement of formal restrictions on HLP sales, transactions and concessions in prescribed areas in the immediate period following conflict and the conclusion of peace agreements. This simple measure, can assist measurably in reducing the unlawful acquisition of land by political and military elites and assist in helping to re-establish the HLP rule of law which is so vital to the economic and legislative health. Considering the utility of issuing qualified or interim titles to housing, land or property prior to formal HLP rights determinations made by the relevant judicial or specialised restitution body, can also help to provide a level of HLP security in the short-term.

69. Peace negotiators from both the Government of Myanmar and ethnic actors will clearly face a range of HLP challenges. Some of these issues will be relatively straight-forward and not necessarily require HLP expertise or complex agreements, while other HLP topics may benefit from specialised knowledge and detailed elaboration as to how to implement the agreement reached. Some issues are likely to be resolved rather quickly without considerable give and take, but others may prove to be the most difficult of all issues on the negotiating table to successfully resolve. In each negotiation the prominence of HLP issues may vary, their centrality to overall peace attempts may alter and their emotive nature may depend on a range of factors such as length of the conflict, resource availability and the economic prospects of the countries concerned.

70. In general terms, the most likely themes to confront negotiators in Myanmar will centre around understanding the *de facto* HLP circumstances in the different ethnic areas, the precise scale of displacement and logistics of return, legal and human rights frameworks, land administration and governance institutions, the housing sector and the question of tenure security.

## **FULLY UNDERSTANDING THE DE FACTO HLP CIRCUMSTANCES**

71. To negotiate HLP matters effectively, peace negotiating teams need to have access to all relevant information and data on HLP circumstances and sentiments in order to formulate effective proposals and to objectively evaluate proposals and counter-proposals put forth by negotiating partners. Negotiators will need to understand which HLP issues and/or abuses contributed to the emergence of the conflict, and in which way. Information on the extent to which such practices are ongoing, determining precisely who the victims such abuses are, and identifying those responsible for the abuses concerned are equally critical areas that need to be fully grasped by those involved in peace processes.

72. Likewise, negotiating teams will need to carefully gauge the HLP sentiments of their negotiating partners, and determine as clearly and rapidly as possible which HLP issues are considered by the parties as core elements of any eventual peace agreement and which HLP issues may post possible peace obstacles to agreement because of what may be seen by one side or another as particularly sensitive issues. Determining whether the parties have sufficient political will to comprehensively address HLP concerns will be a primary task of those seeking agreement, as will developing effective means for ensuring that the views and participation of civil society on HLP matters are fully taken into account.

73. In terms of specific *factual information* that may be required in order to begin discussions on these areas, peace negotiators in Myanmar will need to have access to a range of data, including:

- The number of refugees and IDPs likely to wish to recover their original homes and lands;
- The results of surveys and assessments of the views of returning refugees and IDPs on their HLP wishes and demands in areas of return;
- The scale of secondary occupation of refugee or IDP property by military units, business interests and other private persons;
- The number of homeless and/or landless returning persons and families with emergency housing needs;





- The manner by which housing, land and property rights are registered under the Farmland Act and related new laws;
- The status of the national and local HLP cadastre and other HLP registries;
- Information on ongoing privatization or land regularization programmes;
- The amount of State land available for possible allocation to landless returnees;
- The scale of abandoned private land or State-owned land reserves;
- The presence of land mines in or near to housing sites, agricultural land or land for possible allocation;
- How customary land arrangements function;
- The scale and location of destroyed or damaged housing stock;
- An inventory of abandoned (and currently unused) housing;
- Housing-related infrastructure destruction and damage (water, electricity, etc);
- The availability of social or public housing resources; and
- Full copies of all relevant laws in force at the time of displacement, current HLP legislation and all relevant regional and international laws relevant to HLP rights.

Understanding each of these areas and having up to date, reliable information on these and other HLP concerns will be vital for negotiators to achieve the best possible peace agreements enshrining HLP concerns in an appropriate manner, consistent with conditions on the ground.

## **THE SPECIFICS OF REFUGEE AND IDP RETURN AND HLP RESTITUTION RIGHTS**

74. In assisting to resolve conflict, peace negotiators will also need to explore how best to secure the right to voluntary return for all refugees and IDPs wishing to exercise it. Efforts will be required to ensure that agreement is reached on a series of what – viewed in legal and human rights terms – are non-negotiable issues linked to HLP rights to return and restitution. As one recent UN publication notes “Restitution of land rights is internationally recognised as the preferred option for restoring land rights after conflict. In the case of historical land-related grievances or protracted conflicts involving multiple waves of displacement, great care must be taken to avoid legitimizing past injustices or creating new injustices. Recent practice suggests that restitution is most effectively applied in contexts in which there is: sufficient land to accommodate increased demands; safety and security for populations; national coverage by a reliable land records systems, limited overlapped rights and claims, and sufficient technical and financial resources to address restitution issues comprehensively”.<sup>72</sup> As such, negotiators engaged in peace processes in Myanmar will need to ensure that a range of relevant principles find a central place within the eventual peace agreement. These would include, for instance, the recognition that:

- All refugees and IDPs have the right to voluntarily return or to voluntarily choose not to return;
- Repatriation should always be voluntary;
- All refugees and IDPs have a right to HLP restitution;
- When restitution is materially impossible or not the wish of the refugee or IDP concerned, refugees and IDPs have a right to just and satisfactory compensation;
- Fair and impartial legal and/or judicial mechanisms need to be in place to ensure the protection and enforcement of restitution and compensation rights;
- The special rights of women require attention in these contexts;
- Housing, land and property records and documentation should be secured and publicly available to all returning refugees and IDPs; and
- All refugees have the right to resettle where they wish within their country and to move freely within their country.

To build confidence and to ensure that international law and human rights principles guides the peace processes underway in Myanmar, securing these rights must take precedence over providing land concessions and other preferential treatment to companies and others seeking to acquire refugee and IDP land.

<sup>72</sup> UN Interagency Framework Team for Preventive Action, *Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict* (2010), 11.

## **HLP RESTITUTION OR COMPENSATION (OR BOTH)?**

75. Many peace negotiators have had to grapple with question of when to favour restitution rights for returning refugees and IDPs or determining when and if the conferral of compensation rights (or a combination of the two) might be more suitable given prevailing local conditions following a conflict. Generally within peace agreements, voluntary repatriation arrangements and broader international norms, restitution rights and compensation rights are found in tandem, with restitution - in the terms of the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons - being the "preferred remedy for displacement", and compensation acting as a safety valve of sorts, to be relied upon only when restitution is materially impossible to achieve. This is an important point for peace negotiators to bear in mind, given that there is some indication that the Government has been reluctant thus far to embrace restitution demands, which suggests that provision of compensation as a substitute for actual return and recovery of property may be under consideration, in effect reversing the manner by which international principles approach these crucial issues. It is also vital for negotiators to understand that even in those comparatively rare instances where compensation programmes have been put into effect to resolve displacement claims, these programmes often fail to deliver. When HLP damage assessments form part of a compensation programme, for instance, these processes far too easily be manipulated by the authorities to reduce or avoid compensation payments, by tolerating arbitrary reductions in property valuations, the deliberate underestimation of land holdings, providing insufficient compensation for agricultural lands, the false exaggeration of compensation or assistance already received and so forth. Peace negotiators need to be aware of such possibilities and build into their efforts, measures that clearly give preference to restitution and ensure that if compensation initiatives are undertaken, that these are fair, equitable and subject to appropriate oversight (See Box 3).

## **REFUGEE AND IDP LAND ACQUIRED DURING THE MILITARY ERA AND THE SECONDARY OCCUPATION OF REFUGEE AND/OR IDP HOUSING, LAND AND PROPERTY**

76. All sides engaged in the various peace negotiations in Myanmar will eventually confront the issue of how to approach the question of which rights are held by returning refugees and IDPs to land parcels acquired following their flight by members of the military, their allies and powerful economic interests. Indeed, this issue more than any other HLP theme, will need to be addressed under the peace processes, and may – initially at least – lead to negotiating stances where each side of the talks takes a diametrically opposed position to the other. Bridging this likely HLP gap by addressing the legality of land acquisition undertaken during the previous administration as measured against the rights of those who were forcibly displaced during the various conflicts will be an important challenge to peacemakers, and an issue that needs to be addressed immediately.

77. Peace negotiators seeking to end a variety of conflicts have grappled with similar issues by addressing the consequences of what are often referred to as *abandonment laws* or laws that are selectively applied against particular ethnic, national or other groups as a pretext to prevent these groups from reclaiming their former homes and lands are clearly obstacles to the exercise of HLP rights. In Bosnia and Herzegovina, for instance, all sides to the conflict adopted laws on 'abandoned property' or applied existing abandonment provisions, seeking to legitimise the ethnic cleansing and housing and property confiscation that took place during the war. One of the international community's most widely hailed contributions in Bosnia-Herzegovina was the role it played in ensuring the repeal of these laws and their subsequent implementation of new laws through the Property Law Implementation Plan (PLIP). The Guatemala peace agreement also addressed this issue in more protective terms, with the Government undertaking to ensure that the abandonment of lands was not, in fact, voluntary and that all of those wishing to return to their lands should be allowed to do so. Peace negotiators can assist in finding middle ground and smoothing the way for restitution processes to succeed by building into agreements both protections for returning refugees and IDPs, *as well as* secondary occupants.

**Box 3:**

## KEY PRINCIPLES OF RESTITUTION AND COMPENSATION PROCEDURES

- Restitution claims procedures must be free, accessible and enforceable
- Claims forms and directives on how to fill in the forms should be available in required languages, claims processing centres should be located in easily accessible areas, and assisted by the deployment of mobile teams
- Restitution mechanisms should be able to assist potential claimants in filling out forms, answer questions and/or provide legal counsel or direct representation
- Restitution bodies must have access to all HLP records and evidence
- Restitution remedies must be independent, impartial, diverse, flexible and effective
- Institutions should have at their disposal an array of flexible remedies that can be deployed in adjudicating restitution claims, all options should be examined
- Restitution decisions must be enforced by an effective enforcement arm within any restitution institution
- Restitution bodies should be given powers necessary to enforce their decisions and ensure that Governments and other relevant parties comply
- Homelessness should be prevented in the processes leading to the recovery of refugee and IDP housing
- De-link the availability of alternative accommodation from the determination of restitution rights
- Holders of legitimate rights should not be prevented from re-possessing their homes because of failure of the State concerned to find alternative accommodation to current occupants
- Compensation should be addressed reasonably; not as an alternative to restitution but as a remedy when restitution is not materially possible

## HLP DISPUTES

78. Early on in the peace process, negotiators should also determine how best to address actual and likely HLP disputes arising from restitution and compensation claims by ethnic actors, as much as possible in a pre-emptive manner through the determined setting of terms within agreements to declare null and void any arbitrary taking of housing, land or property and to ensuring that all HLP disputes can easily, equitably and affordably be presented before an independent body - or existing judicial institution - dedicated to resolving them in accordance with the rights of those affected. They should be aware of whether or not return processes are already underway, and whether the secondary occupation of refugee or IDP homes is or is expected to be a large problem.

79. As refugees and IDPs begin to voluntarily repatriate to their areas of origin as conflicts end, HLP rights disputes frequently emerge, and this is already occurring in Myanmar. Beyond the problems associated with secondary occupation, such disputes may involve housing, land and property claims by persons without documentation to prove their claims but who do hold legitimate rights; determining rights in instances where current occupants hold 'lawful titles', but where returnees do not; determining rights following unregistered or unofficial transfers of property; claims by legitimate purchasers of property after it was initially expropriated; claims for improvements made on homes, lands and property legally owned by returning refugees and IDPs; claims on the determination of boundaries; claims of tenancy rights and cultivation rights; and many others. In addition, peace negotiators will also need to be aware of any instances where refugees and displaced persons were forced to conclude

fraudulent sale or rental agreements at the time of flight, which are then used by those who coerced them to do so, as a basis of their own, albeit fraudulent, claims.

## **THE HLP INSTITUTIONAL FRAMEWORK**

80. As noted, addressing the HLP rights claims of refugees and IDPs wishing to return to and recover their original homes, lands and properties is increasingly treated as a key component in peace efforts, and provisions outlining the institutional frameworks required to achieve the implementation of these rights are found within a growing number of peace agreements. Creating an HLP institutional framework within the various peace agreements that emerge, will be beneficial to securing a sustainable peace. Negotiators will need to determine the jurisdiction of any new HLP committee or commission that may be created, the types of claims that can be submitted to a given mechanism, who can present the claims, how far back in time claims can go, and whether decisions are permanent or interim in nature. Promoting the rights of affected refugees and IDPs to be consulted and given the opportunity to formulate proposals concerning the exercise of their HLP rights will assist in according legitimacy to the restitution processes developed and assist in the implementation of the peace agreement achieved. Negotiators need to understand the demands put forward by refugee and IDP communities, and fully grasp the extent to which they wish to exercise restitution to their original homes or whether other arrangements such as compensation or resettlement may suffice.<sup>73</sup> Those negotiating peace in Myanmar will need to determine if such bodies are required, and if so, what principles should guide these bodies, what form they should take to ensure maximum and prompt effect, and to determine time-frames for their establishment and completion of their work. Ensuring that all returning refugees and IDPs have free and easy access to such bodies will, of course, be of paramount importance.

## **POTENTIAL OBSTACLES WITHIN THE DOMESTIC HLP LEGAL FRAMEWORK IN MYANMAR**

81. Peace negotiators will also need to fully understand the HLP legal framework now applicable in Myanmar, including the customary laws in place governing HLP relations, be prepared to urge the adoption of new HLP laws supportive of HLP rights, and be willing - as has been the case in a range of peace agreements and post-conflict peace operations - to suggest specific HLP legislative reform measures seen to be vital for an enduring peace.<sup>74</sup> Understanding the degree to which the legal framework is sufficient for resolving HLP disputes in a fair and equitable way or whether legislative reform, including the possible creation of new HLP mechanisms to resolve HLP disputes, will greatly assist in securing HLP rights in peacebuilding endeavours. In addition to the various HLP disputes that arise directly due to conflict, a variety of longstanding or pre-conflict HLP ownership, use and tenancy disputes may also arise during peace processes. Where these disputes formed the basis of the conflict concerned, it will be incumbent on peace brokers to address the nature of these disputes and seek agreement between the parties as to their resolution. In some instances, no clear title may have ever existed to the land or dwelling in question, while in others several people may place competing claims on the same piece of land or house. Measures designed to resolve these questions can be very useful. As an initial first step, peace negotiators need to have access to compilations of all relevant domestic housing, land and property legislation, and where relevant, have access to experts who can fully explain the nature and processes of whatever customary land arrangements may exist.

82. Myanmar has an extensive HLP legal infrastructure, and as noted above, a variety of constitutional provisions are relevant to refugee and IDP return. Moreover, the new HLP laws may have a bearing on the extent to which refugees and IDPs are able to exercise their rights to voluntary return, HLP restitution and other related rights.<sup>75</sup>

<sup>73</sup> Peace processes in a range of countries led to the establishment of dedicated commissions and other bodies (including adjudicative bodies entrusted with making binding determinations) designed to facilitate the rights of returnees to return to, reclaim and re-possess their original homes. Specialised bodies created to achieve these objectives have been created in Bosnia and Herzegovina (Commission on Real Property Claims), Burundi (National Commission for the Rehabilitation of *Sinistrés*), Georgia (Commission on Restitution and Compensation), Iraq (Iraq Property Claims Commission), Kosovo (Housing and Property Directorate and Housing and Property Claims Commission), (South) Sudan (Land Commissions), Tajikistan (Local Courts) and elsewhere. Similar bodies have been proposed in during peace talks and during phases of transition in Cyprus, Sri Lanka, Timor Leste and elsewhere. For a compilation of laws, peace agreements and other texts that established these and other bodies, see: Scott Leckie (2007) *Housing, Land and Property Restitution Rights for Refugees and Displaced Persons: Laws, Cases and Materials* (editor), Cambridge University Press.

<sup>74</sup> See: Scott Leckie and Ezekiel Simperingham, *Housing, Land and Property Rights in Burma: The Current Legal Framework* (Displacement Solutions & HLP Institute, 2009), for a full collection of HLP laws in place in Myanmar in 2009. See also, UNHCR, UN Habitat & Norwegian Ministry of Foreign Affairs, *Guidance Note on Land Issues Myanmar*, 2010.

<sup>75</sup> A detailed overview of the new HLP legislative framework is addressed in another report by Displacement Solutions published in October 2012, entitled: *Myanmar at the HLP Crossroads: Proposals for Building an Improved Housing, Land and Property Rights Framework that Protects the People and Supports Sustainable Economic Development*.

In the eyes of many, the laws are intentionally designed to facilitate, rather than deter, land grabbing and the concentration of land in fewer hands. These processes require substantial re-thinking if the country is to build upon the foundations of the rule of law, human rights and equity, and peace negotiators from all groups will need to understand the new laws and build agreements that seek to overcome their shortcomings on a range of vital issues to returning refugees and IDPs (See Box 4).

83. Ultimately, peace negotiators will be most effective if they have awareness of the full range of laws relevant to HLP concerns that may arise within the context of negotiations. In addition to the specific laws just noted, negotiators should also be familiar with: *Laws governing abandonment and restitution* - Abandonment laws or provisions (including adverse possession); Housing, land or property laws adopted during the armed conflict (e.g. allocation of abandoned housing to others); Laws concerning the restitution of HLP rights; The general position of formal law vis-à-vis customary land titles and ownership; *Laws and regulations governing the different HLP rights* - Laws on HLP ownership and other rights; Landlord and tenant law; Land laws (including user rights and administrative procedures); Laws regulating security of tenure; Laws governing property sales (including transfer rules), exchanges and leases; Housing and land expropriation laws (including compensation provisions); Provisions on improvements; Laws determining succession rights to land and housing, particularly the rights of women to access and control land; and Laws governing communal ownership of land or housing; *Housing stock* - Laws concerning housing repairs and improvements; Laws addressing housing credit and finance; Laws governing State property including social housing resources; and Laws on public health and housing; *Laws governing institutions, procedures and HLP records* - Institutions currently in charge of HLP matters; *Laws or provisions regulating eviction* - Procedural and other laws governing the rights of people to be protected from unlawful or arbitrary forced or other forms of eviction, including the judicial remedies and procedural requirements concerned; and *HLP registry laws and regulations* - Laws governing the registration of housing, land and property rights, the transfer of HLP rights and the institutions entrusted with maintaining and updating this vital HLP information.

### **CUSTOMARY HLP LAWS**

84. Peace negotiators in Myanmar can best serve the interests peace by taking an open-minded and flexible view of customary methods of determining land rights, and when they have as full a grasp as possible of how these systems work, whether they are fully functional and the degree to which they correspond with or conflict with international human rights standards governing HLP questions. Customary land arrangements should be seen first and foremost by peace negotiators as potentially fair, equitable, affordable and quick ways of resolving land disputes, which may greatly assist in strengthening peace agreements in the country.

#### Box 4:

## LESSONS LEARNED ON ADDRESSING HLP RIGHTS IN PEACE PROCESSES

- *Address HLP issues within the context of governance issues in peace agreements, not only in terms of human rights or refugee/IDPs:* HLP issues are invariably rule of law issues and directly impinge on political understandings, as well as legislative and judicial sectors.
- *Include HLP rights directly within peace agreements, security council resolutions, voluntary repatriation agreements and other policy documents:* Directly addressing these rights and highlighting them will assist in peacebuilding and protect the rights of victims of conflict.
- *Include HLP rights competencies within the institutional and administrative structures of peace operations and fund them adequately:* Addressing HLP rights within peace agreements is not discretionary if the protection and promotion of human rights are key objectives of the overall peace plan.
- *Determine the applicable legal and policy framework during the planning process:* Valuable months are often spent during the initial periods of peace operations identifying local laws, compiling these, translating them and trying to understand how the entire domestic legal framework on housing, land and property rights actually fits together.
- *Ignoring HLP rights will not make the problems go away:* Unless HLP rights are given the attention they require, they will invariably re-surface, with often-violent results.
- *A gender perspective should pervade all HLP sectors:* Every effort should be made to ensure that all women's HLP rights, in particular equality and inheritance rights form a core part of all peace agreements.
- *Prepare for a long-term process:* The full enjoyment of HLP rights by everyone will invariably be a long-term process, but one which will stand a far larger likelihood of success if addressed properly within peace agreements.
- *Convene national housing, land and property rights consultations:* Facilitating national dialogue on HLP issues is a concrete step that can be undertaken in all countries to assist in developing better and more appropriate HLP policy and law.
- *Minimize residential disruption to the maximum possible extent:* Do not order, carry out or tolerate forced evictions of people from their present homes (unless truly extraordinary circumstances so warrant).
- *Identify measures to ensure affordable housing and land to all:* Introduce or expand housing subsidy programs to ensure that low-income groups are not forced to spend a disproportionate percentage of their income on satisfying housing requirements; and develop rent regulation policies to protect low-income groups against unreasonable rent increases.
- *Identify and allocate affordable land for low-income housing settlements:* Set benchmarks for the identification of land for eventual use and/or allocation to low-income groups; and develop longer-term plans for land allocation and distribution (particularly of State land) with a view to accurately addressing future housing needs.
- *Develop an emergency policy response to homelessness:* Reducing and eliminating homelessness warrants major consideration by peace mediators. Resources should be sought to assist the homeless and to begin the process of finding permanent housing solutions for all. Identifying vacant State property and allocating this for the temporary or permanent use of the homeless would be an immediate step that could be taken with very limited financial implications.
- *Promote programs for groups with special housing needs:* Develop special housing policies for vulnerable and other groups with special housing needs, including: women-headed households, the disabled, older persons, minorities, indigenous peoples, unaccompanied or separated children and others.
- *Registration of housing:* The HLP system, and/or the national land cadastre will require establishment, (or re-establishment and updating). As appropriate, alternative titling and deeds systems should be proposed to expedite the conferral of security of tenure and official registration of housing rights.

## VIII. Preliminary Recommendations: Building an HLP Environment for Sustainable Peace

85. This brief report has outlined the many housing, land and property rights issues that may arise within the ongoing peace processes between the government of Myanmar and Ethnic Actors, particularly insofar as these relate to the HLP rights of refugees and IDPs to voluntary return. The paper has shown that a series of internationally recognised rights and principles can be applied to the ongoing peace negotiations in Myanmar. With a view to ensuring that a sustainable peace emerges through agreements grounded deeply in law, rights and best practices, this report concludes with the following recommendations:

### THE GOVERNMENT OF MYANMAR SHOULD:

1. **Ensure** that all peace and voluntary repatriation and return agreements that it concludes with ethnic groups fully comply with international law, the UN Principles on Housing and Property Rights for Refugees and Displaced Persons (*Pinheiro Principles*) and international best practice with respect to the HLP rights of refugees and IDPs;
2. **Guarantee**, at a minimum, that each of the five core HLP rights are fully enshrined within all peace and voluntary repatriation and return agreements it concludes, in particular, (a) the right to voluntary return; (b) the right to HLP restitution; (c) the right to adequate housing and secure tenure; (d) the right to protection against forced eviction; and (e) the right not to be arbitrarily deprived of one's property;
3. **Reconsider** the view that the original lands of refugees and IDPs acquired following their displacement was legal under prevailing laws at the time of acquisition and, therefore, not available for restitution to the original owners and occupants;
4. **Protect and respect** the rights of returning refugees and IDPs to return to their original lands, if this is at all possible and viewed as the preferred remedy by returnees, as well as other durable solutions to displacement;
5. **Guarantee** that just and satisfactory compensation is provided to returning refugees and IDPs if restitution is deemed to be materially impossible;
6. **Display flexibility** on potentially contentious HLP issues, and do so with an understanding that compromise and concessions on certain HLP issues will yield political and other dividends from all actors, both domestic and international; and
7. **Agree** to the establishment of independent and effective mechanisms to resolve any HLP disputes that may arise in the context of return.

### ETHNIC ACTORS SHOULD:

1. **Develop** consistent and unified negotiating positions on HLP rights issues and ensure that these positions represent both the wishes of refugees and IDPs and conform to international law including the *Pinheiro Principles* and international best practice;
2. **Carry out** intensive surveys, assessments and related research to accurately determine refugee and IDP views on critical HLP issues, as well as statistical data relating to all HLP issues; and
3. **Ensure**, to the maximum possible extent, that all ethnic groups have a common and clear position on all of the major HLP rights likely to be addressed within the context of peace negotiations and refugee and IDP return, in particular the five core rights outlined in section II of this report.



## THE INTERNATIONAL COMMUNITY SHOULD:

1. **Advocate** for the inclusion of HLP rights issues within all peace and voluntary repatriation agreements affecting both refugees and IDPs in which they are involved or are otherwise able to influence;
2. **Consolidate** the views of international agencies and donors on refugee/IDP restitution and return and related HLP themes;
3. **Encourage** the application of the *Pinheiro Principles* to refugee and IDP restitution and return;
4. **Support** training and capacity-building programmes for peace negotiators from the Government and ethnic groups on HLP issues; and
5. **Distribute** copies of the multi-agency (FAO, IDMC, OCHA, OHCHR, UN-Habitat and UNHCR), *Handbook on Housing and Property Restitution for Refugees and Displaced Persons - Implementing the Pinheiro Principles*, (March 2007), to all relevant peace negotiators.





## Annex

# UN ('Pinheiro') Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)<sup>76</sup>

### **PREAMBLE**

*Recognizing* that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

*Underscoring* that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

*Reaffirming* the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

*Welcoming* the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognised and reaffirmed the right to housing, land and property restitution,

*Convinced* that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on

the part of international organizations and affected States, is indispensable to ensuring their effective implementation, *Convinced* also that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

### **SECTION I. SCOPE AND APPLICATION**

#### **1. Scope and Application**

1.1 The principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter "refugees and displaced persons") who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

<sup>76</sup> See: *Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons* (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1). This document contains the official UN text of the *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, as approved by UN Sub-Commission on the Protection and Promotion of Human Rights in Resolution 2005/21 of 11 August 2005.

## **SECTION II. THE RIGHT TO HOUSING AND PROPERTY RESTITUTION**

### **2. The right to housing and property restitution**

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

## **SECTION III. OVERARCHING PRINCIPLES**

### **3. The right to non-discrimination**

3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.

3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

### **4. The right to equality between men and women**

4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.

4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.

4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

### **5. The right to be protected from displacement**

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

### **6. The right to privacy and respect for the home**

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

### **7. The right to peaceful enjoyment of possessions**

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

## **8. The right to adequate housing**

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

## **9. The right to freedom of movement**

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

## **SECTION IV. THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY**

### **10. The right to voluntary return in safety and dignity**

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or

places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

## **SECTION V. LEGAL, POLICY, PROCEDURAL AND INSTITUTIONAL IMPLEMENTATION MECHANISMS**

### **11. Compatibility with international human rights, refugee and humanitarian law and related standards**

11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognised therein.

### **12. National procedures, institutions and mechanisms**

12.1 States should establish and support equitable, timely, independent, transparent and nondiscriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognise the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the "best interests of the child".

12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies

with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decisionmaking, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

### **13. Accessibility of restitution claims procedures**

13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.

13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.

13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.

13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.

13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.

13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.

13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified

persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.

13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.

13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.

13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

#### **14. Adequate consultation and participation in decision-making**

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly,

single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.

#### **15. Housing, land and property records and documentation**

15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognise the rights of possession of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees

or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

15.8 States shall not recognise as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

## **16. The rights of tenants and other non-owners**

16.1 States should ensure that the rights of tenants, socialoccupancy rights holders and other legitimate occupants or users of housing, land and property are recognised within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

## **17. Secondary occupants**

17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision

of legal remedies, including opportunities for legal redress.

17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.

17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.

17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

## **18. Legislative measures**

18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognised as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.

18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land



and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognised, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

## **19. Prohibition of arbitrary and discriminatory laws**

19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

## **20. Enforcement of restitution decisions and judgements**

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgements.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgements made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements.

Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimise destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of noncompliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

## **21. Compensation**

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

## **SECTION VI. THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS**

### **22. Responsibility of the international community**

22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.

22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.

22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.

22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.

22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.

22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgements. Members of the Security Council should consider including this role in the mandate of peace operations.

22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require

that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

## **SECTION VII. INTERPRETATION**

### **23. Interpretation**

23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognised under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognised under national law.



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DISPLACEMENT SOLUTIONS, JUNE 2013

